

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
3                   CHARLESTON DIVISION

4  
5                 B.P.J. BY HER NEXT FRIEND AND                 )  
6                 MOTHER, HEATHER JACKSON,                         )  
7                                                                         )  
8                 PLAINTIFF,                                             )  
9                                                                         ) CIVIL ACTION NO.  
10                VS.                                                     ) 2:21-cv-00316  
11                                                                         )  
12                WEST VIRGINIA STATE BOARD OF                     )  
13                EDUCATION, HARRISON COUNTY BOARD             )  
14                OF EDUCATION, WEST VIRGINIA                     )  
15                SECONDARY SCHOOL ACTIVITIES                     )  
16                COMMISSION, W. CLAYTON BURCH IN             )  
17                HIS OFFICIAL CAPACITY AS STATE                 )  
18                SUPERINTENDENT, DORA STUTLER IN                 )  
19                HER OFFICIAL CAPACITY AS HARRISON             )  
20                COUNTY SUPERINTENDENT, AND THE                     )  
21                STATE OF WEST VIRGINIA,,                         )  
22                                                                         )  
23                 DEFENDANTS,                                             )  
24                                                                         )  
25                 AND                                                     )  
26                                                                         )  
27                 LAINEY ARMISTEAD,                                 )  
28                                                                         )  
29                 DEFENDANT- INTERVENOR.                             )  
30                                                                         )  
31                                                                         )

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32  
33                                                                         VIDEOTAPED REMOTE ZOOM 30(b)(6) DEPOSITION  
34                                                                             WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION  
35                                                                             BERNARD DOLAN  
36                                                                             FRIDAY, FEBRUARY 11, 2022  
37  
38                                                                         JOB NO. 5079532  
39                                                                             REPORTED BY: DAYNA HESTER, C.S.R. 9970

1 VIDEOTAPED REMOTE ZOOM 30(B)(6) DEPOSITION OF WEST  
2 VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION BERNARD  
3 DOLAN, TAKEN ON BEHALF OF PLAINTIFF B.P.J., BY HER NEXT  
4 FRIEND AND MOTHER, HEATHER JACKSON, AT 12:18 P.M., EASTERN  
5 STANDARD TIME, FRIDAY, FEBRUARY 11, 2022, WITH THE WITNESS  
6 (PHYSICALLY PRESENT WITH COUNSEL), COURT REPORTER, AND  
7 VIDEOGRAPHER APPEARING REMOTELY VIA ZOOM VIDEOCONFERENCE,  
8 BEFORE DAYNA HESTER, C.S.R. NO. 9970.

9  
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6 SHAWNA HYNES, VIDEOGRAPHER  
(PRESENT VIA ZOOM VIDEOCONFERENCE)

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8 LINDSAY DUPHILY, VERITEXT CONCIERGE  
9 (PRESENT VIA ZOOM VIDEOCONFERENCE)

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4		BY MS. KANG	14
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8	QUESTIONS INSTRUCTED BY COUNSEL NOT TO ANSWER		
9		(NONE.)	
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11		E X H I B I T S	
12	EXHIBIT NO.	PAGE	DESCRIPTION
13	EXHIBIT 1	18	FILE TITLED "EXHIBIT 0001 - TAB 14.PDF"
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1 ZOOM VIDEOCONFERENCE DEPOSITION

2 FRIDAY, FEBRUARY 11, 2022

3 12:18 P.M. EASTERN STANDARD TIME

5 THE VIDEOGRAPHER: Good afternoon.

6 We are going on the record at 12:18 p.m. 12:18  
7 EST on February 11th, 2022. 12:18

8 Please note that the microphones may pick 12:18  
9 up background noise, private conversations, and 12:18  
10 interference if unmuted. 12:18

11 When muted remember to unmute to speak on 12:18  
12 the record. 12:18

13 Audio and video recording will continue to 12:18  
14 take place unless all parties agree to go off the 12:18  
15 record. 12:18

16 This is Media Unit 1 of the video-recorded 12:18  
17 deposition of 30(b) (6) witness Bernie Dolan taken by 12:19  
18 counsel for plaintiff in the matter of B.P.J., by 12:19  
19 her next friend and mother, Heather Jackson, versus 12:19  
20 West Virginia State Board of Education, et al., 12:19  
21 filed in the United States District Court for the 12:19  
22 Southern District of West Virginia, Charleston 12:19  
23 Division. Case Number 2:21-cv-00316. 12:19

24 This deposition is being conducted via 12:19  
25 Veritext Virtual Zoom technology and all parties are 12:19

1 attending remotely. 12:19  
2 My name is Shawna Hynes from the firm 12:19  
3 Veritext Legal Solutions, and I am the videographer. 12:19  
4 The court reporter is Dayna Hester from 12:19  
5 the firm Veritext Legal Solutions. 12:20  
6 I am not related to any party in this 12:20  
7 action, nor am I financially interested in the 12:20  
8 outcome. 12:20  
9 Counsel present and everyone attending 12:20  
10 remotely will state their appearances and 12:20  
11 affiliations for the record. 12:20  
12 If there are any objections to proceeding, 12:20  
13 please state them at the time of your appearance 12:20  
14 beginning with the noticing attorney. 12:20  
15 MS. KANG: Hi. 12:20  
16 My name is Katelyn Kang. I'm an attorney 12:20  
17 at the law firm of Cooley LLP, and I'm here on 12:20  
18 behalf of the plaintiff. 12:20  
19 And I'll let my co-counsel introduce 12:20  
20 themselves. 12:20  
21 MS. HARTNETT: Hi. 12:20  
22 This is Kathleen Hartnett from Cooley LLP 12:20  
23 for plaintiff. 12:20  
24 MR. BARR: Good afternoon. 12:20  
25 This is Andrew Barr from Cooley LLP on 12:20

1	behalf of plaintiff.	12:20
2	MS. VEROFF: Hello.	12:20
3	This is Julie Veroff from Cooley LP on	12:20
4	behalf of plaintiff.	12:20
5	MS. STARK: Hi.	12:20
6	This is Loree Stark with the American	12:20
7	Civil Liberties Union of West Virginia on behalf of	12:21
8	plaintiff.	12:21
9	MR. WARD: Hi.	12:21
10	Nicholas Ward, ACLU West Virginia, on	12:21
11	behalf of plaintiff.	12:21
12	MS. HELSTROM: Hi.	12:21
13	This is Zoë Helstrom from Cooley LLP on	12:21
14	behalf of plaintiff.	12:21
15	MS. PELET DEL TORO: Hi.	12:21
16	This is Valeria Pelet del Toro from Cooley	12:21
17	LLP on behalf of plaintiff.	12:21
18	MS. GREEN: Hi.	12:21
19	Am I too soon?	12:21
20	MR. BLOCK: Hi.	12:21
21	This is Josh Block from ACLU on behalf of	12:21
22	plaintiff.	12:21
23	MS. SWAMINATHAN: And hi.	12:21
24	This is Sruti Swaminathan from Lambda	12:21
25	Legal on behalf of plaintiff.	12:21

1 MS. GREEN: This is Roberta Green, Shuman 12:21  
2 McCuskey & Slicer. I'm here on behalf of WVSSAC. 12:21  
3 And here with me today is our deponent 12:22  
4 30(b) (6) witness Bernie Dolan. 12:22  
5 MS. BANDY: Hello. 12:22  
6 This is Kimberly Bandy also on behalf of 12:22  
7 West Virginia SSAC. 12:22  
8 MS. MORGAN: This is Kelly Morgan on 12:22  
9 behalf of the West Virginia State Board of Education 12:22  
10 and Superintendent Burch. 12:22  
11 I have with me as well general counsel 12:22  
12 Heather Hutchens and Deputy Superintendent Michelle 12:22  
13 Blatt as our representative. 12:22  
14 MR. CAPEHEART: This is Curtis Capeheart 12:22  
15 the West Virginia Attorney General's office on 12:22  
16 behalf of the defendant State of West Virginia. 12:22  
17 Also with me in my office is another 12:22  
18 individual from the office, Jesseca Church. 12:22  
19 MR. CROPP: My name is Jeffrey Cropp. I'm 12:22  
20 with Steptoe & Johnson. We represent defendants 12:22  
21 Harrison County Board of Education and 12:22  
22 Superintendent Dora Stutler. 12:22  
23 MS. HAMMOND: Hi. 12:23  
24 This is Kristen Hammond. I'm also on 12:23  
25 behalf of the West Virginia State Board of Education 12:23

1 and Superintendent Burch. 12:23  
2 MR. SCRUGGS: All right. I think that 12:23  
3 leaves us as intervenor. 12:23  
4 Jonathan Scruggs on behalf of the 12:23  
5 Intervenor with Alliance Defending Freedom. 12:23  
6 And also attending today on behalf of the 12:23  
7 intervenor is my -- let me get my list here -- Catie 12:23  
8 Kelly, Christiana Holcomb, Hal Frampton, and 12:23  
9 Timothy Ducar. 12:23  
10 And that is it. 12:23  
11 THE VIDEOGRAPHER: Thank you. 12:23  
12 If that's everybody, will the court 12:23  
13 reporter please swear in the witness. 12:23  
14 THE REPORTER: Okay. And because it is a 12:23  
15 federal case, I do have a read-on. One second. 12:23  
16 My name is Dayna Hester. This statement 13:08  
17 is to acknowledge my obligations pursuant to Federal 13:08  
18 Rules of Civil Procedure. 13:08  
19 Rule 30(b), Subsection 5(a). My business 13:08  
20 address is 707 Wilshire Boulevard, Los Angeles, 13:08  
21 California. The videographer has stated the 13:08  
22 additional required information.  
23 Rule 30(b), Subsection 5(c). Upon  
24 completion of the deposition, if there is a  
25 stipulation about the custody of the transcript or

1 other pertinent matters, I will recite such  
2 stipulation(s). Additionally, the videographer will  
3 read-off when the deposition concludes.

4 So with this being said, I will now swear  
5 in the witness.

6 Mr. Dolan, please, raise your right hand.

7 THE WITNESS: [Witness did as requested].

8 THE REPORTER: Do you affirm the testimony  
9 you are about to give in the cause now pending will  
10 be the truth, the whole truth, and nothing but the  
11 truth? 12:24

12 THE WITNESS: I do. 12:24

13 THE REPORTER: Thank you. 12:24

14

15 BERNARD DOLAN

16 having been first duly sworn, was  
17 examined and testified as follows:

18

19 EXAMINATION 12:25

20 BY MS. KANG: 12:25

21 Q. Hi. Good afternoon, Mr. Dolan. How are 12:25  
22 you? 12:25

23 A. Good. How are you? 12:25

24 Q. Doing well. 12:25

25 Thank you so much for spending your Friday 12:25

2 Before we get started, would you please 12:25  
3 state and spell your name for the record. 12:25

4 A. Bernard, B-E-R-N-A-R-D; Dolan, D-O-L-A-N. 12:25

5 Q. Mr. Dolan, before we get started, we have 12:25  
6 some housekeeping items. So the oath you just took 12:25  
7 is the same oath you would take if you were 12:25  
8 testifying in a courtroom. So what that means is 12:25  
9 you must testify truthfully and not leave out any 12:25  
10 important facts. 12:25

11 Is there any reason you cannot testify 12:25  
12 truthfully today? 12:25

13 A. No. 12:25

14 Q. Please give verbal answers to any of my 12:25  
15 questions. Nodding or shaking your head cannot, 12:25  
16 unfortunately, be captured by the court reporter. 12:25  
17 So the answer you just gave was perfect. 12:25

18                   If you don't understand the question,           12:25  
19        please let me know, and I'm happy to try to rephrase   12:25  
20        it or make it clear for you. If you answer, I will      12:25  
21        assume you understood. Is that fair?                   12:25

22 A. Yes. 12:25

23 Q. And just to be clear, when I ask questions 12:25  
24 I am not seeking communications that you had with 12:26  
25 your attorney. 12:26

1                   Because the court reporter is taking down       12:26  
2 what we say on the record, I'll do my best to avoid       12:26  
3 talking over you and to avoid talking at the same       12:26  
4 time as you.       12:26

5                   And then, finally, I'm going to try to do       12:26  
6 a break every hour or so -- but if at any point you       12:26  
7 need a break, we'll finish up whatever question we       12:26  
8 are on, and we can take a break whenever you feel       12:26  
9 comfortable.       12:26

10                  Does that sound fair?       12:26

11                  A. Yes, ma'am.       12:26

12                  Q. Have you ever had your deposition taken       12:26  
13 before?       12:26

14                  A. Yes.       12:26

15                  Q. When was it?       12:26

16                  A. Two years ago, I believe.       12:26

17                  Q. What was it about?       12:26

18                  A. A herpes case in wrestling.       12:26

19                  Q. So were you testifying on behalf of the       12:26  
20 WVSSAC?       12:26

21                  A. Yes, ma'am.       12:26

22                  Q. And going forward if I say the       12:26  
23 "Commission" instead of the "WVSSAC," would that be       12:26  
24 all right with you?       12:26

25                  A. That is fine.       12:26

1 Q. So you mentioned it's a herpes case. Can 12:26  
2 you tell me whether you testified on behalf of the 12:27  
3 W- -- of the Commission or was it in your personal 12:27  
4 capacity? 12:27

5 A. I believe it was on behalf of the 12:27  
6 Commission, but I'm -- I wouldn't -- I'm not sure. 12:27

7 Q. Have you ever -- have you ever had your 12:27  
8 deposition taken other than this time? 12:27

9 A. Not that I recall. 12:27

10 Q. Have you ever testified at trial? 12:27

11 A. Yes. 12:27

12 Q. When was this? 12:27

13 A. Couple years -- I would say probably three 12:27  
14 or four years ago. 12:27

15 Q. What was it about? 12:27

16 A. A golf ruling in a championship. 12:27

17 Q. And so were you also testifying on behalf 12:27  
18 of the Commission? 12:27

19 A. Yes, ma'am. 12:27

20 Q. Did you bring anything with you today? 12:27

21 A. Just a bottle of water. 12:27

22 Q. Good. 12:27

23 And do you understand that you are here to 12:27  
24 respond to a 30(b) (6) deposition notice? 12:28

25 A. Yes. 12:28

1 Q. Do you know what a 30(b)(6) deposition -- 12:28  
2 deposition notice is? 12:28  
3 A. Yes. 12:28  
4 Q. Have you had a chance to review the 12:28  
5 deposition notice? 12:28  
6 A. Yes. 12:28  
7 Q. So in that deposition notice, there were a 12:28  
8 number of topics. 12:28  
9 Are you familiar with each of the topics 12:28  
10 described in that notice? 12:28  
11 A. Yes. 12:28  
12 Q. So if you go into your Marked Exhibits 12:28  
13 folder, I'm going to introduce to you a document 12:28  
14 that's been marked as Exhibit 1. 12:28  
15 (Deposition Exhibit 1 was marked for 12:28  
16 identification and is attached hereto.) 12:28  
17 BY MS. KANG: 12:28  
18 Q. Let me know when you have had a chance to 12:28  
19 pull that up. 12:28  
20 A. Okay. Exhibit 1, the deposition notice. 12:28  
21 Q. That's correct. 12:28  
22 And I'm going to ask you to scroll down to 12:28  
23 Page 6 of Exhibit A. I believe it's Page 7 of the 12:28  
24 actual pdf, if that's helpful, or Page 6. 12:29  
25 A. Yes. Okay. 12:29

1 Q. Great. 12:29  
2 So I'm going to go through each of the 12:29  
3 topics and just ask you a few questions about them. 12:29  
4 So for Topic 1, what did you do to prepare 12:29  
5 for Topic 1? 12:29  
6 A. Looked at our organization. 12:29  
7 Q. Did you review any documents? 12:29  
8 A. Our rules and regulations. 12:29  
9 Q. And by looked at your organization, did 12:29  
10 you mean -- 12:29  
11 A. Review -- 12:29  
12 Q. -- look at your -- sorry. Go ahead. 12:29  
13 A. Just -- there's a part of our rules and 12:29  
14 regulations that has a history of the organization. 12:29  
15 Q. Got it. 12:29  
16 Is there any reason you can't give full 12:29  
17 and complete testimony on Topic 1? 12:29  
18 A. No. 12:29  
19 Q. When preparing for Topic 1, did you 12:30  
20 consult with anyone other than your attorney? 12:30  
21 A. No. 12:30  
22 Q. Moving on to Topic 2, same question. What 12:30  
23 did you do to prepare for Topic 2? 12:30  
24 A. Probably just discuss with my attorney. 12:30  
25 Q. And did you review any documents? 12:30

1	A. Not necessary for that one.	12:30
2	Q. And just to clarify, you didn't talk to	12:30
3	anyone other than your attorney?	12:30
4	A. No.	12:30
5	Q. For Topic 3, what did you do to prepare	12:30
6	for Topic 3?	12:30
7	A. Looked at our handbook, rules and	12:30
8	regulations handbook.	12:30
9	Q. Did you review any other document?	12:30
10	A. No.	12:30
11	Q. Did you consult with anyone other than	12:30
12	your attorney?	12:30
13	A. No.	12:30
14	Q. And is there any reason you cannot give	12:30
15	full and complete answers on behalf of the	12:30
16	Commission for that topic?	12:30
17	A. No.	12:30
18	Q. For Topic 4, what did you do to prepare	12:31
19	for it?	12:31
20	A. Rules and regulations handbook.	12:31
21	Q. Did you review anything else?	12:31
22	A. No.	12:31
23	Q. Did you consult with anyone other than	12:31
24	your attorney?	12:31
25	A. No.	12:31

1 Q. And is there any reason you cannot give 12:31  
2 full and complete answers on behalf of the 12:31  
3 Commission for Topic 4? 12:31  
4 A. No. 12:31  
5 Q. For Topic 5, what did you do to prepare 12:31  
6 for that? 12:31  
7 A. Looked at our rules and regulations and 12:31  
8 probably researched my email. 12:31  
9 Q. Can you clarify for me what you mean by 12:31  
10 researched your email? 12:31  
11 A. Just search the email to make sure I 12:31  
12 didn't have any communication with the plaintiffs. 12:31  
13 Q. Did you consult with anyone other than 12:31  
14 your attorney for Topic 5? 12:32  
15 A. No. 12:32  
16 Q. And is there any reason you cannot give 12:32  
17 full and complete answers on behalf of the 12:32  
18 Commission? 12:32  
19 A. No. 12:32  
20 Q. Sorry. I know these questions are 12:32  
21 repetitive, but I do appreciate it. 12:32  
22 For Topic 6, what did you do to prepare 12:32  
23 for Topic 6? 12:32  
24 A. Researched -- or looked through my emails 12:32  
25 as well as text messages. 12:32

1	Q. Did you review any documents?	12:32
2	A. Not really. Just -- I'm sorry.	12:32
3	Our transgender policy or our Board	12:32
4	policy. That was all.	12:32
5	Q. Did you review any of the emails or text	12:32
6	messages that you searched for?	12:32
7	A. I probably would have read them for -- to	12:32
8	determine whether there was any substance to them,	12:32
9	yes.	12:33
10	Q. Did you consult with anyone other than	12:33
11	your attorney for Topic 6?	12:33
12	A. No.	12:33
13	Q. And is there any reason you cannot give	12:33
14	full and complete answers on behalf of the	12:33
15	Commission for Topic 6?	12:33
16	A. No.	12:33
17	Q. For Topic 7, what did you do to prepare	12:33
18	for it?	12:33
19	A. Looked at our rules and regulations	12:33
20	handbook.	12:33
21	Q. Did you review any documents other than	12:33
22	the rules and regulations handbook?	12:33
23	A. No.	12:33
24	Q. Did you consult with anyone other than	12:33
25	your attorney about Topic 7?	12:33

1	A.	No.	12:33
2	Q.	And is there any reason you cannot give	12:33
3		full and complete answers on behalf of the	12:33
4		Commission?	12:33
5	A.	No.	12:33
6	Q.	For Topic 8, what did you do to prepare	12:33
7		for Topic 8?	12:33
8	A.	Reviewed text messages and emails	12:33
9		concerning House Bill 3293.	12:34
10	Q.	Did you review anything else?	12:34
11	A.	No.	12:34
12	Q.	Did you consult with anyone other than	12:34
13		your attorney?	12:34
14	A.	No.	12:34
15	Q.	And is there any reason you cannot give	12:34
16		full and complete answers on behalf of the	12:34
17		Commission?	12:34
18	A.	No.	12:34
19	Q.	For Topic 9, what did you do to prepare	12:34
20		for Topic 9?	12:34
21	A.	Reviewed the rules and regulations	12:34
22		handbook.	12:34
23	Q.	Did you review anything other than the	12:34
24		rules and regulations handbook?	12:34
25	A.	No.	12:34

1 Q. Did you consult anyone other than your 12:34  
2 attorney? 12:34  
3 A. No. 12:34  
4 Q. Is there any reason you cannot give full 12:34  
5 and complete answers on behalf of the Commission? 12:34  
6 A. No. 12:34  
7 Q. All right. We're almost there. 12:34  
8 For Topic 10, what did you do to prepare 12:34  
9 for it? 12:34  
10 A. Reviewed the rules and regulations 12:34  
11 handbook. 12:35  
12 Q. Did you review anything else? 12:35  
13 A. No. 12:35  
14 Q. Did you -- did you consult anyone other 12:35  
15 than your attorney? 12:35  
16 A. No. 12:35  
17 Q. Is there any reason you cannot give full 12:35  
18 and complete answers on behalf of the Commission? 12:35  
19 A. No. 12:35  
20 Q. For Topic 11, what did you do to prepare 12:35  
21 for it? 12:35  
22 A. Reviewed the rules and regulations 12:35  
23 handbook as well as the Board policy on transgender. 12:35  
24 Q. Did you review anything else? 12:35  
25 A. No. 12:35

1	Q. Did you consult with anyone other than	12:35
2	your attorney?	12:35
3	A. No.	12:35
4	Q. Is there any reason you cannot give full	12:35
5	and complete answers on behalf of the Commission?	12:35
6	A. No.	12:35
7	Q. For Topic 12, what did you do to prepare	12:35
8	for it?	12:35
9	A. Reviewed the rules and regulations	12:36
10	handbook.	12:36
11	Q. Did you review anything else?	12:36
12	A. No.	12:36
13	Q. Did you consult with anyone other than	12:36
14	your attorney?	12:36
15	A. No.	12:36
16	Q. Is there any reason you can't give full	12:36
17	and complete answers on behalf of the Commission?	12:36
18	A. No.	12:36
19	Q. For Topic 13, what did you do to prepare	12:36
20	for it?	12:36
21	A. Read the rule -- read the House Bill 3293.	12:36
22	Q. Did you review anything else?	12:36
23	A. Just our rules and regulations.	12:36
24	Q. Did you consult with anyone other than	12:36
25	your attorney?	12:36

1	A. No.	12:36
2	Q. And is there any reason you cannot give	12:36
3	full and complete answers on behalf of the	12:36
4	Commission?	12:36
5	A. I -- I did consult -- I probably -- I had	12:37
6	a communication with Melissa White from House	12:37
7	Education. She had sent me documents -- or a	12:37
8	document. So I would say I communicated with	12:37
9	Melissa White about House Bill 3293.	12:37
10	Q. Was this in preparation for this	12:37
11	deposition?	12:37
12	A. No. I'm sorry.	12:37
13	Q. No need to apologize.	12:37
14	All right. Last -- last topic. What did	12:37
15	you do to prepare for Topic 14?	12:37
16	A. Primarily reviewed the rules and	12:37
17	regulations handbook and the transgender Board	12:37
18	policy and look at emails and text messages.	12:37
19	Q. Anything else?	12:38
20	A. No.	12:38
21	Q. Did you consult with anyone other than	12:38
22	your attorney?	12:38
23	A. No.	12:38
24	Q. Is there any reason you cannot give full	12:38
25	and complete answers on behalf of the Commission?	12:38

1 A. No. 12:38  
2 Q. So for some of these topics, you mentioned 12:38  
3 reviewing emails and documents. Do you know if 12:38  
4 those emails and documents have been produced to 12:38  
5 Plaintiff? 12:38  
6 A. They all have, yes. 12:38  
7 Q. All right. Thank you. 12:38  
8 MS. KANG: You can take down Exhibit 1. 12:38  
9 BY MS. KANG: 12:38  
10 Q. Do you understand that you're testifying 12:38  
11 about these topics in the deposition notice on 12:38  
12 behalf of the Commission? 12:38  
13 A. Yes. 12:38  
14 Q. So just to be clear, when I ask for your 12:38  
15 position on something, I -- I'm asking for the 12:38  
16 position of -- of the Commission unless I say 12:38  
17 otherwise. 12:38  
18 You understand? 12:38  
19 A. Yes, ma'am. 12:38  
20 Q. In general, what did you do to prepare for 12:38  
21 today's deposition? 12:38  
22 A. Again, reviewed the rule -- the rules and 12:39  
23 regulations. 12:39  
24 Q. Did you meet with anyone other than your 12:39  
25 attorney? 12:39

1	A. No.	12:39
2	Q. Did you discuss today's deposition with	12:39
3	anyone other than your attorney?	12:39
4	A. Just that I had it scheduled so people	12:39
5	would know in the office not to send me calls.	12:39
6	Q. So other employees at -- at the	12:39
7	Commission; is that right?	12:39
8	A. Yes, ma'am.	12:39
9	Q. Do you know who B.P.J. is?	12:39
10	A. By name only, yes.	12:39
11	Q. Do you know anything else about her?	12:39
12	MS. GREEN: I'll just object to the form,	12:39
13	to the extent he knows things from me, from counsel.	12:39
14	THE WITNESS: I have -- only know what --	12:39
15	the documents that have been sent to me. I don't	12:39
16	know anything firsthand about her.	12:40
17	BY MS. KANG:	12:40
18	Q. Do you agree that B.P.J. is a girl who is	12:40
19	transgender?	12:40
20	MS. GREEN: I'll object to the form. And	12:40
21	I'll just object outside the scope.	12:40
22	THE WITNESS: It's been presented to me	12:40
23	that way.	12:40
24	BY MS. KANG:	12:40
25	Q. Are you aware that B.P.J. ran	12:40

1	cross-country on the girls' team at Bridgeport	12:40
2	Middle School?	12:40
3	A. Yes.	12:40
4	Q. How did you become aware of that?	12:40
5	A. Through the court case.	12:40
6	Q. Have you ever spoken to B.P.J.?	12:40
7	A. I have not.	12:40
8	Q. Have you ever spoken to B.P.J.'s parents?	12:40
9	A. No.	12:40
10	MS. GREEN: And I'll just object to the	12:40
11	extent this is outside the scope.	12:40
12	BY MS. KANG:	12:40
13	Q. Have you ever spoken to B.P.J.'s sibling?	12:40
14	A. No.	12:40
15	Q. Now, I want to just talk a little bit	12:40
16	about your personal background to sort of better	12:41
17	understand your selection as -- as the witness for	12:41
18	the 30(b)(6) deposition.	12:41
19	What is your position at the Commission?	12:41
20	A. I am the executive director.	12:41
21	Q. What are your responsibilities as	12:41
22	executive director?	12:41
23	A. Generally oversee the organization, assign	12:41
24	duties and evaluate staff, make decisions when	12:41
25	there's disagreement amongst schools.	12:41

1 Q. What sort of duties do you assign? 12:41  
2 A. Director of all the tournaments. So 12:41  
3 each -- each assistant executive director is 12:41  
4 assigned multiple sports that they will oversee 12:41  
5 and -- and put on the tournaments. 12:41  
6 I assign secretarial duties to the 12:41  
7 secretarial staff. 12:41  
8 Q. How many assistant executive directors do 12:42  
9 you have? 12:42  
10 A. Three. 12:42  
11 Q. So I believe you said you make decisions 12:42  
12 when schools have disputes. Is that accurate? 12:42  
13 A. Yes, ma'am. 12:42  
14 Q. Can you tell me a little bit -- a little 12:42  
15 bit more about that. 12:42  
16 MS. GREEN: I'll just object. Outside the 12:42  
17 scope. 12:42  
18 THE WITNESS: If there is a difference 12:42  
19 on -- opinion on eligibility of a student in one 12:42  
20 school, one school may say they are eligible, one 12:42  
21 school may say they are ineligible. So we gather 12:42  
22 the facts, and we'll make a determination. 12:42  
23 BY MS. KANG: 12:42  
24 Q. And by "we," do you mean you as the 12:42  
25 executive director or the Commission? 12:42

1	A. The Commission.	12:42
2	Q. And who is --	12:42
3	A. And I -- I'm sorry. Me as the executive	12:42
4	director for the Commission.	12:42
5	Q. Understood.	12:42
6	How long have you been the executive	12:42
7	director?	12:43
8	A. Seven years.	12:43
9	Q. Have you held any other positions at the	12:43
10	Commission?	12:43
11	A. No.	12:43
12	Q. Do you --	12:43
13	A. Pardon me. Wait a minute.	12:43
14	I was on the Board of Directors at one	12:43
15	point.	12:43
16	Q. And when was that?	12:43
17	A. That -- I believe it was 2012 to 2014.	12:43
18	Q. What was your role when you were on the	12:43
19	Board of Directors?	12:43
20	MS. GREEN: Object to the form.	12:43
21	THE WITNESS: Approve -- approve the	12:43
22	workings of the organization to proof financial	12:43
23	reports, those things.	12:43
24	Also to hear appeals of students or	12:43
25	coaches who have been -- who violated the rule and	12:43

1       they come up before the Board to either appeal their     12:44  
2       discipline or appeal their ineligibility.                 12:44  
3       BY MS. KANG:                                                     12:44  
4           Q.    Do you report to anyone currently as the     12:44  
5       executive director?                                             12:44  
6           A.    I have ten Board members, yes.                     12:44  
7           Q.    Is that the same Board of Directors that     12:44  
8       you were just talking about?                                 12:44  
9           A.    Yes, ma'am.                                             12:44  
10          Q.    Does anyone report to you?                         12:44  
11          A.    My eight other staff members report to me,     12:44  
12       yes.                                                             12:44  
13          Q.    What are their titles?                             12:44  
14          A.    Three of --                                             12:44  
15          MS. GREEN: Object. Outside the scope.                 12:44  
16          And can I just have a continuing objection     12:44  
17       for the outside scope, or you want be to keep     12:44  
18       hopping in?                                                     12:44  
19          MS. KANG: Yes. I'll grant you a                         12:44  
20       continuing objection for outside the scope, Roberta. 12:44  
21          MS. GREEN: Thank you. Thank you.                     12:44  
22          THE WITNESS: There are three assistant     12:44  
23       executive directors, one events communication     12:44  
24       coordinator, one bookkeeper, and three secretaries. 12:44  
25       ///

1 BY MS. KANG: 12:45  
2 Q. Have you ever been employed by -- employed 12:45  
3 by the Attorney General's Office of the State of 12:45  
4 West Virginia? 12:45  
5 A. No. 12:45  
6 Q. Have you ever been employed by the 12:45  
7 West Virginia House of Delegates? 12:45  
8 A. No. 12:45  
9 Q. Have you ever been employed by the 12:45  
10 West Virginia Senate? 12:45  
11 A. No. 12:45  
12 Q. Have you ever been employed by the 12:45  
13 Harrison County Board of Education? 12:45  
14 A. No. 12:45  
15 Q. Have you ever been employed by the 12:45  
16 West Virginia State Board of Education? 12:45  
17 A. No. 12:45  
18 Q. So I am going to introduce to you a 12:45  
19 document that is going to be marked as Exhibit 2. 12:45  
20 And I'll let you know when it should 12:45  
21 appear in your Marked Exhibit folder. 12:45  
22 (Deposition Exhibit 2 was marked for 12:45  
23 identification and is attached hereto.) 12:45  
24 BY MS. KANG: 12:45  
25 Q. So if you go to your Marked Exhibit 12:45

1 folder, you should now see a document that's been 12:45  
2 marked as Exhibit 2. 12:45  
3 Let me know when you see it. 12:46  
4 A. Okay. 12:46  
5 Q. So on Page 2 of Exhibit 2, you'll see a 12:46  
6 section entitled "Bernie Dolan," and this is -- I'll 12:46  
7 represent to you that this is a screenshot that I 12:46  
8 took from the Commission website on February 10th, 12:46  
9 2022. And in the bottom left corner you'll see the 12:46  
10 URL stamp where I pulled it from the website. 12:46  
11 And I'd just like to ask you a few 12:46  
12 questions about your biography in -- on this page. 12:46  
13 Do you agree with what's written in the 12:46  
14 paragraph on Page 2 of Exhibit 2 under "Bernie 12:46  
15 Dolan"? 12:46  
16 MS. MORGAN: Counsel, this is Kelly 12:46  
17 Morgan. 12:46  
18 I do not see an Exhibit 2 in the Egnyte. 12:46  
19 MS. KANG: So if you're -- if anyone is 12:46  
20 having trouble accessing the Marked Exhibits, I 12:46  
21 recommend clicking on the folder again to refresh 12:46  
22 it. 12:46  
23 Let me know if you continue to have 12:47  
24 problems. 12:47  
25 THE WITNESS: I do -- I agree with what is 12:47

1 written there. 12:47

2 BY MS. KANG: 12:47

3 Q. Where did you work before your current 12:47

4 role at the Commission? 12:47

5 A. Ohio County Schools. 12:47

6 Q. How long did you work there? 12:47

7 A. 30 years. 12:47

8 Q. Whoa. 12:47

9 Did you interact with any transgender 12:47

10 individuals in that role? 12:47

11 A. I did not. 12:47

12 Q. When did you attend West Virginia 12:47

13 University? 12:47

14 A. I graduated in '85; so probably '81 to 12:47

15 '85. 12:47

16 Q. And when did you attend Salem 12:47

17 International University? 12:47

18 A. I would say '99 to 2000 or 2000 to 2001. 12:47

19 Q. What is the Super Six? 12:47

20 A. State football championship. 12:48

21 Q. What was your role there? 12:48

22 A. I had a variety of roles starting out from 12:48

23 assistant media director over the years to being the 12:48

24 director -- once I was the athletic director of 12:48

25 Wheeling Park High School. 12:48

1	Q. What was your role as the athletic	12:48
2	director?	12:48
3	A. I was the athletic director at Wheeling	12:48
4	Park High School.	12:48
5	What was the question?	12:48
6	Q. Sure.	12:48
7	Could you tell me what some of your	12:48
8	responsibilities were in that role?	12:48
9	A. I would oversee the coaches, do their	12:48
10	evaluations, purchase equipment for each team, as	12:48
11	well as coordinate transportation, and also make	12:48
12	sure all eligibility information was submitted to	12:48
13	the Commission -- Commission as well as accurate.	12:48
14	Q. What is the state golf tournament?	12:49
15	A. State championship for golf.	12:49
16	Q. And what was your role there?	12:49
17	A. The director.	12:49
18	Q. What is OVAC?	12:49
19	A. It's the Ohio Valley Athletic Conference.	12:49
20	It was the conference that Wheeling Park was a	12:49
21	member of, and still is, but it's the athletic	12:49
22	conference for the high schools.	12:49
23	Q. What was your role there?	12:49
24	A. I served on executive Board a couple of	12:49
25	the years while I was the athletic director at	12:49



1 MS. KANG: You can take down Exhibit 2 12:50  
2 now. 12:50  
3 BY MS. KANG: 12:50  
4 Q. So now I want to move into talking a 12:50  
5 little bit more about the Commission and its 12:50  
6 structure. 12:50  
7 When was the Commission founded? 12:50  
8 A. In 1916. 12:50  
9 Q. Why was it founded? 12:51  
10 A. To primarily handle disputes between 12:51  
11 schools at that point, and they did provide 12:51  
12 championship opportunities for schools. 12:51  
13 Q. What sort of disputes between schools? 12:51  
14 A. As I said earlier, it could be 12:51  
15 eligibility; it could have been breaking of 12:51  
16 contracts; could be officials, you know -- who -- 12:51  
17 what officials get assigned to games. 12:51  
18 So there is quite a bit of conflict 12:51  
19 possible. 12:51  
20 Q. How does the Commission define secondary 12:51  
21 sports? 12:51  
22 A. Secondary sports, we are -- we oversee the 12:51  
23 sports that we currently have, which is -- a number 12:51  
24 of them. 12:52  
25 But the -- what happens is, as the schools 12:52

1 offer these sports as clubs, once there is enough 12:52  
2 schools that offer the sports, then they would 12:52  
3 petition us to recognize an additional sport. So we 12:52  
4 have, I believe, 19 championships at this point. 12:52  
  
5 Q. What grades count as a secondary grade? 12:52  
  
6 A. 6th through 12. 12:52  
  
7 Q. Do you know if Bridgeport Middle School 12:52  
8 qualifies as a secondary school? 12:52  
  
9 A. They are a member of our association. So 12:52  
10 yes. 12:52  
  
11 Q. Can you tell me what is a member of 12:52  
12 your -- what does a member of your association mean? 12:52  
  
13 A. First of all, initially there was 12:52  
14 a initia- -- an initiation fee. And there were 12:52  
15 dues. But we have not charged dues for 20 years. 12:52  
  
16 To be a member, you just have to 12:53  
17 provide -- you have to agree to follow all the rules 12:53  
18 and regulations as well as provide an opportunity 12:53  
19 for a boy sport and a girl sport in each of the 12:53  
20 seasons. 12:53  
  
21 Q. So each member school has to offer a boys' 12:53  
22 team or a girls' team for each support? 12:53  
  
23 A. Yes. 12:53  
  
24 Q. Is that right? 12:53  
  
25 A. Yes. Yes. 12:53

1 Q. And you said you stopped collecting dues 12:53  
2 for 20 years; is that correct? 12:53  
3 A. Yes. 12:53  
4 Q. Why did the Commission stop collecting 12:53  
5 dues? 12:53  
6 A. At that point, it was more trouble than it 12:53  
7 was worth it. There wasn't that much money coming 12:53  
8 in from dues. It was before my time, though. 12:53  
9 Q. Understood. 12:53  
10 How many employees does the Commission 12:53  
11 have currently? 12:53  
12 A. Nine. 12:53  
13 Q. Is there someone who is considered in 12:54  
14 charge of the Commission? 12:54  
15 A. I would assume -- I am the executive 12:54  
16 director. So I would be in charge. But I still 12:54  
17 answer to my Board of Directors. 12:54  
18 Q. So does the Commission have a relationship 12:54  
19 with the State Board of Education in West Virginia? 12:54  
20 A. We do have a relationship, number one. As 12:54  
21 our rules are promulgated from our members, they 12:54  
22 will submit rules to be voted on by the membership 12:54  
23 at our Board of Control. 12:54  
24 If at the Board of Control they pass by a 12:54  
25 majority, then those rules get submitted to the 12:54

1 State Board of Education who would then put them out 12:54  
2 for public comment. 12:54  
3 And they would have final vote on whether 12:54  
4 or not the rule becomes law. And if it does, they 12:54  
5 will submit that to the Secretary of State's office. 12:55  
6 Q. So just to clarify, who submits the rules 12:55  
7 to the Board of Control again? 12:55  
8 A. Principals. We are a principals 12:55  
9 organization. So each principal has one vote in our 12:55  
10 membership. 12:55  
11 Q. And are you the principal of your member 12:55  
12 school? 12:55  
13 A. Yes, ma'am. 12:55  
14 Q. Do you personally, as the executive 12:55  
15 director, work with the State Board of Education of 12:55  
16 West Virginia? 12:55  
17 A. Not directly. 12:55  
18 MS. GREEN: I'm sorry. Could -- I'm 12:55  
19 sorry. 12:55  
20 Ms. Kang, would you repeat the question? 12:55  
21 MS. KANG: Sure. 12:55  
22 BY MS. KANG:  
23 Q. Do you personally, as the executive 12:55  
24 director, have a role or relationship with the State 12:55  
25 Board of Education of West Virginia? 12:55

1           A. I don't have a -- I mean, I have a working       12:55  
2         relationship because we deal with same schools. But       12:55  
3         as far as on a daily basis of any interaction, no --   12:55  
4         other than they approve the rules.                           12:56

5           Q. Does the Commission have a relationship       12:56  
6         with the County Board of Education?                       12:56

7           A. Not really. We are a principals                   12:56  
8         organization. We do communicate with county boards.   12:56  
9         But our membership are the high schools.               12:56

10          Q. What sort of communication --                   12:56

11          A. And --                                               12:56

12          Q. Oh, sorry.                                       12:56

13          What sort of communications would you have   12:56  
14         with the County Board?                               12:56

15          A. Oftentimes we would -- if there is rules   12:56  
16         or memos that we go out and send out, sometimes we   12:56  
17         will send them to the County Boards of Education   12:56  
18         that -- to keep them up to date on what is going on   12:56  
19         with the Commission.                               12:56

20          Q. By "rules," do you mean the Commission's   12:56  
21         rules?                                               12:56

22          A. It could be -- yes, the Commission rules.   12:56

23          Yep. Yes.                                       12:57

24          Q. Does the Commission determine who can play   12:57  
25         on a secondary school sports team?                   12:57

1 MS. GREEN: Object to the form. 12:57  
2 THE WITNESS: When you say "Commission," 12:57  
3 it's not the nine members here at the office. 12:57  
4 The Commission, technically, is made up by 12:57  
5 the 286 members. So they have voted in the rules, 12:57  
6 and they are required by law -- by the -- being a 12:57  
7 member to follow those rules. So only when there is 12:57  
8 a dispute do we intervene. 12:57  
9 BY MS. KANG: 12:57  
10 Q. So I'd ask who makes the initial 12:57  
11 determination of a student's eligibility? 12:57  
12 A. That would be the school. 12:57  
13 Q. I believe you mentioned earlier the -- a 12:57  
14 dispute process. So the student -- or a student's 12:57  
15 eligibility is disputed. 12:57  
16 Can you walk me through what would happen 12:57  
17 there? 12:57  
18 A. It could be a school sending -- if 12:57  
19 Student A left School Number 1, went to School 12:58  
20 Number 2, and didn't follow the normal transfer 12:58  
21 procedures, School A might file a complaint to say, 12:58  
22 "Hey, can you look at so-and-so because they never 12:58  
23 sat out with School B, or Number 2." 12:58  
24 So we would intervene and get the 12:58  
25 information, work with the two schools, and come up 12:58

1 with a final answer. 12:58

2 Q. What sort of information would you look 12:58  
3 at? 12:58

4 A. Whether they -- when they enrolled at the 12:58  
5 school, who they -- are they still living with their 12:58  
6 parents, same household, did they -- did they make a 12:58  
7 bona fide move, and whether they have a 2.0 or not. 12:58  
8 Things like that. 12:58

9 Q. Anything else? 12:58

10           A.     Could be age. There's a number of rules       12:58  
11           for eligibility, but those are the biggest ones.      12:58

12 Q. So if a student is deemed ineligible by 12:59  
13 the Commission, is that student -- student 12:59  
14 prohibited from playing? 12:59

15           A. The student would be prohibited from           12:59  
16        playing in a varsity or JV game. There's only a           12:59  
17        limited exception as to when they would be able to           12:59  
18        even practice with the team. But for the most part,           12:59  
19        if you're ineligible, you're ineligible for all           12:59  
20        activities for that team.                                   12:59

21 Q. And I believe you mentioned that you have 12:59  
22 286 member schools. Do you know if that includes 12:59  
23 all the schools -- secondary schools in 12:59  
24 West Virginia? 12:59

25 A. It does not. 12:59

1	Q. Do you know how many schools are not a	12:59
2	member school in West Virginia?	12:59
3	A. I do not.	12:59
4	Q. If the Commission finds a person is	12:59
5	ineligible, is there an appeal process?	12:59
6	A. Yes, there is.	12:59
7	Q. Can you walk me through what that appeal	13:00
8	process looks like?	13:00
9	A. They would -- I would send them a letter	13:00
10	telling them initially that they were determined	13:00
11	ineligible. If they would like a hearing in front	13:00
12	of our Board of Directors, then along with the	13:00
13	level -- along with a letter of ineligibility, I	13:00
14	would send the appeal papers that they would fill	13:00
15	out and return to me.	13:00
16	And then within 30 days, I would bring	13:00
17	them before our Board of Directors for them to make	13:00
18	a decision to grant a waiver or not. And the Board	13:00
19	can grant a waiver for rule fails to accomplish what	13:00
20	it was intended for or there's a hardship on the	13:00
21	student.	13:00
22	Q. What sort of hardship would count?	13:00
23	A. It -- it's up to the Board of Directors.	13:00
24	So there is -- there's no marker that you have to	13:00
25	hit. So there's lots of different things that may	13:01

1 have come up. 13:01

2 Q. Have you taken part in the appeal process 13:01

3 before? 13:01

4 A. When I was a member of the Board of 13:01

5 Directors, yes. 13:01

6 Q. So is it the Board of Directors that makes 13:01

7 the determination on the appeal? 13:01

8 A. Yes. 13:01

9 Q. Are you familiar with WVEIS, the 13:01

10 West Virginia Education Information System? 13:01

11 A. Yes. 13:01

12 Q. Does the Commission have any control over 13:01

13 the information that goes into WVEIS? 13:01

14 A. No. We have no access to that note. 13:01

15 Q. In West Virginia, to your knowledge, has a 13:01

16 college team ever competed against a middle school 13:01

17 team? 13:02

18 A. Has a college team ever competed against a 13:02

19 middle school? 13:02

20 Q. That's correct. 13:02

21 A. It would be against our rule if they did. 13:02

22 But no, not to my knowledge. 13:02

23 MS. KANG: So I'm going to introduce a 13:02

24 document to you that's going to be marked as 13:02

25 Exhibit 3, and I'll let you know when folks can 13:02

1 access it in their Marked Exhibit folder. 13:02  
2 (Deposition Exhibit 3 was marked for 13:02  
3 identification and is attached hereto.) 13:02  
4 MS. KANG: So Exhibit 3 should now be in 13:02  
5 everyone's Marked Exhibit folder. If you don't see 13:02  
6 it, try clicking on the folder again to refresh it. 13:03  
7 BY MS. KANG: 13:03  
8 Q. Mr. Dolan, let me know when you're able to 13:03  
9 access Exhibit 3. 13:03  
10 A. Okay. 13:03  
11 Q. Do you recognize this document? 13:03  
12 A. It is our rules and regulations handbook. 13:03  
13 Yes. 13:03  
14 Q. Do you know who prepared this document? 13:03  
15 A. Over time it's -- you know -- you know, 13:03  
16 it's the charge of one of my secretaries to -- once 13:03  
17 rules are changed, to submit the changes. But we 13:03  
18 take care of that in -- in the office here. 13:03  
19 Q. So is this a Commission that's responsible 13:03  
20 for the information in the rules and regulations 13:03  
21 handbook? 13:03  
22 A. Yes. 13:03  
23 Q. So you'll notice that on the first page of 13:03  
24 Exhibit 3 it says that this was revised and printed 13:04  
25 August 2021. 13:04

1	Is this the most recent version of the	13:04
2	rules and regulations?	13:04
3	A. Yes. There may be editorial changes	13:04
4	between then, but that's the most recent copy we	13:04
5	have, yes.	13:04
6	Q. So is it fair to say --	13:04
7	A. For --	13:04
8	Q. I'm sorry. Go ahead.	13:04
9	A. For the current year.	13:04
10	Q. So is it fair to say that this document	13:04
11	is -- is currently in effect?	13:04
12	A. Yes.	13:04
13	Q. And just to be clear, is this the rules	13:04
14	and regulations handbook that you reviewed when	13:04
15	preparing for this deposition?	13:04
16	A. Yes.	13:04
17	Q. Is the Commission required to follow these	13:04
18	rules and regulations?	13:04
19	A. The Commission as well as all the member	13:04
20	schools, yes.	13:04
21	Q. So I believe you might have mentioned it	13:04
22	earlier, but just to be clear, can you walk me	13:04
23	through the rule-making process of the rules and	13:05
24	regulations in this handbook?	13:05
25	A. Okay. Any principal can submit a rule	13:05

1 proposal. It has to be in by January 15th. 13:05

2 This rule proposal would then be looked at 13:05  
3 by our constitution and bylaws committee. They 13:05  
4 would make sure that it's legal and written 13:05  
5 appropriate. 13:05

6 In the next week here, we'll be sending 13:05  
7 out those proposals, all of our rule proposal 13:05  
8 changes out to our membership. 13:05

9 We will meet in the -- the first week of 13:05  
10 in April. And we will go over all of the rule 13:05  
11 proposals, and we'll vote on them individually. 13:05

12 If they pass by a majority, they'll move 13:05  
13 on to the State Board of Education, who puts them 13:05  
14 out for comment. And then they will vote on them 13:05  
15 whether or not they will move forward as part of our 13:06  
16 rule book. 13:06

17 Q. What do you mean by you make sure that the 13:06  
18 proposed rule is legal? 13:06

19 A. Sometimes the way it's written may not be 13:06  
20 appropriate. You know, there just may be 13:06  
21 misspellings, misinterpretation. So any changes we 13:06  
22 make would go back to the person who made it. We 13:06  
23 would re-read it and say, "Is this what your intent 13:06  
24 was" to make sure it's written properly. 13:06

25 Q. And just to be clear, who exactly votes on 13:06

1                   the proposed rule in the Commission?                   13:06  
2                   A.     At our Board of Control, all 286 members           13:06  
3                   are eligible to vote. So if they come to our annual           13:06  
4                   meeting, we will discuss each item. And then the           13:07  
5                   next day we vote on every item that we have.           13:07  
6                   Q.     So it -- it would be the Board of Control           13:07  
7                   and any member school who participate in that           13:07  
8                   meeting that would vote on that rule?           13:07  
9                   A.     That is correct.                                   13:07  
10                  Q.     Who amends these rules if they need           13:07  
11                  amendments?                                           13:07  
12                  A.     Beforehand, it would be the constitution           13:07  
13                  and bylaws. There is a committee that we have           13:07  
14                  that -- made up of five principals.                   13:07  
15                  Q.     Who is responsible for enforcing these           13:07  
16                  rules?                                           13:07  
17                  A.     All of the member schools plus the SSAC           13:07  
18                  office itself.                                   13:07  
19                  Q.     What happens if a member school doesn't           13:07  
20                  follow these rules?                                   13:07  
21                  A.     Either the coach, the administration, or           13:07  
22                  the school itself could face any sort of penalty           13:07  
23                  from a letter of warning to suspension or fine.           13:08  
24                  Q.     By "suspension," do you mean suspension           13:08  
25                  from being a member school?                           13:08

1           A. I don't know if we have ever suspended           13:08  
2           anybody from being a member school, but it would be           13:08  
3           suspicion of games, maybe not able to participate in           13:08  
4           championships.                                                   13:08  
  
5           But, to my knowledge, we have never                       13:08  
6           suspended anybody from being a member.                   13:08  
  
7           Q. Is it possible for the Commission to               13:08  
8           cancel a school's membership?                           13:08  
  
9           A. I'm not sure.                                           13:08  
  
10          Q. To your knowledge, has anyone ever               13:08  
11          submitted a rule proposal about the participation of           13:08  
12          transgender students?                                   13:08  
  
13          A. No.                                                   13:08  
  
14          Q. So I'm going to be just walking you               13:09  
15          through a couple of excerpts in this exhibit. And           13:09  
16          it is quite long. So I'm only going to be pointing           13:09  
17          to certain sections.                                   13:09  
  
18          So with that said, as I am going through,               13:09  
19          if you want me to slow down or pause, or you want to           13:09  
20          read over something, just -- just let me know.           13:09  
  
21          So I'm going to ask you to turn to Page 99           13:09  
22          of the pdf. In the bottom right-hand corner, it           13:09  
23          will be stamped WVSSAC000216. And let me know           13:09  
24          whenever you happen to get there.                       13:09  
  
25          A. What page again?                                   13:10

1 Q. So it's Page 99 of the pdf. But I believe 13:10  
2 it's Page 85 of the actual document. 13:10  
3 A. Okay. 13:10  
4 Q. And just for future reference, when I -- 13:10  
5 when I say Page 99 or Page 2, I'm referring the page 13:10  
6 of the pdf not the page numbers that may be written 13:10  
7 in the exhibit. 13:10  
8 MS. GREEN: His assistant is slow. He has 13:10  
9 got a really slow assistant over here who is paging 13:10  
10 through a page at a time. We should be back in 13:10  
11 about two weeks. 13:10  
12 THE WITNESS: Is it the organizational 13:10  
13 chart? 13:10  
14 BY MS. KANG: 13:10  
15 Q. That's correct. 13:10  
16 A. Okay. Yes. I am there. 13:10  
17 Q. Do you recognize this organizational 13:10  
18 chart? 13:10  
19 A. I do. 13:11  
20 Q. Do you believe that accurately reflects 13:11  
21 the organizational structure of the Commission? 13:11  
22 A. Except for the State Board of Education, 13:11  
23 they only have oversight of our -- they have final 13:11  
24 say of our rules. So that may be why they are 13:11  
25 placed at the top. 13:11

1                   The Board of Directors -- I'm not sure it       13:11  
2 accurately reflects our organization. But yeah.       13:11  
3                   Q. Would --                                          13:11  
4                   A. The Board of Directors does not answer to   13:11  
5 the Board of Control, I guess.                                  13:11  
6                   Q. So, I guess, where would you place the   13:11  
7 Board of Directors in the organizational chart to       13:11  
8 make it more accurate?                                          13:11  
9                   A. Well, I would probably and will probably   13:11  
10 move State Board of Education, National Federation   13:11  
11 out of the chart, and Board of Directors would be at   13:11  
12 the top. Board of Control would be where the       13:11  
13 National Federation is.                                          13:12  
14                   Q. So is it fair to say that the Board of   13:12  
15 Directors is probably the one at the head of the       13:12  
16 organization?                                                          13:12  
17                   A. That is correct.                                    13:12  
18                   Q. I'm just going to ask you few questions   13:12  
19 about a couple of these -- of these entries on the   13:12  
20 organizational chart.                                              13:12  
21                   Can you tell me a little more about the   13:12  
22 State Board of Education's relationship with the   13:12  
23 Board of Control specifically.                                    13:12  
24                   A. With the Board of Control, the State Board   13:12  
25 of Education has final -- they will review and put   13:12

1 the rules out for comments by the general public, 13:12  
2 and they'll have the final say on the votes. 13:12

3 That's probably the only relationship the 13:12  
4 State Board of Education has with the Board of 13:12  
5 Control. 13:13

6 Q. I know you touched a bit on this earlier, 13:13  
7 but could you tell me a bit more about what the 13:13  
8 Board of Control's role is in the Commission. 13:13

9           A.     The Board of Control's charge is to vote       13:13  
10          for rule changes, either vote them up or down.       13:13

11 Q. What do you mean by "vote them up or 13:13  
12 down"? 13:13

13           A.     When the -- they are put up for a vote,       13:13  
14     whether it's to create a new rule or not, it's their   13:13  
15     vote -- it's a majority of the Board of Control that   13:13  
16     is there that day for the vote.                          13:13

17 It either passes or it fails. If it 13:13  
18 passes, it goes on to the State Board of Education. 13:13

19 Q. Does the State Board ever promulgate rules 13:13  
20 that the Commission has to follow? 13:13

25 Q. Does the Commission have to follow that 13:14

2 A. Yes. And all of our members. 13:14

3 Q. Are you aware of any other rules from the 13:14  
4 State Board of Education? 13:14

5 A. Not really. 13 : 14

6 Q. What is the Board of Control's 13:14  
7 relationship with the directors, if any? 13:14

8           A. Five of the Board of Directors are           13:14  
9 principals; so five of those principals would be           13:14  
10 members of the Board of Control. That's about           13:14  
11 the -- the best relationship -- the only           13:14  
12 relationship they have.           13:14

13 Q. What is the Board of Control's 13:14  
14 relationship with the executive director? 13:14

15           A.     None, really. I mean, the Board -- the     13:15  
16         Board -- the five members of the Board of Directors     13:15  
17         that are principals represented an administrative     13:15  
18         district. And so the Board -- the Board of     13:15  
19         Directors answers to schools in their district. So     13:15  
20         that's the only indirect connection between myself     13:15  
21         and the Board of Control.     13:15

22 Q. And there are ten Board of 13:15  
23 Directors members; is that right? 13:15

24 A. Yes, ma'am. 13:15

25 Q. Does any member of the Board of Directors 13:15

1 ever promulgate or propose rules? 13:15  
2 A. If they are one of the five principals 13:15  
3 they can, yes. 13:15  
4 Q. Can you tell me a little bit more about 13:15  
5 what your assistant executive directors do in 13:16  
6 relation to the rules in this handbook? 13:16  
7 A. Basically they -- they can help interpret 13:16  
8 the rules between our member schools, if there is 13:16  
9 issues. 13:16  
10 But they primarily are responsible for the 13:16  
11 championships in their particular sports. But they 13:16  
12 can answer questions and interpretations on disputes 13:16  
13 of the rule book between schools. 13:16  
14 Q. By overseeing the championship, does that 13:16  
15 include issuing rules for the championship? 13:16  
16 A. No. All of our playing rules are created 13:16  
17 by the National Federation. There are some times 13:16  
18 that they have -- by state adoption that you can 13:16  
19 modify rules, but we follow the NFHS playing rules 13:16  
20 100 percent. 13:17  
21 Q. So the -- 13:17  
22 A. Close a 100 percent. As close to a 13:17  
23 100 percent as possible. 13:17  
24 Q. So does -- so the Commission does not have 13:17  
25 any of its own rules in relation to championship? 13:17

1           A. No. There are rules in there that govern       13:17  
2        how many people are at the game; you know, how many       13:17  
3        teams are at the game; where the game is going to be       13:17  
4        held. All those things. The time. The place.       13:17  
5        Those are all determined by our Board of Directors.       13:17

6           And then they are given the charge to       13:17  
7        myself or my -- my assistants to run those       13:17  
8        championships on those days.       13:17

9           Q. What does the Sports Medicine Committee       13:17  
10      do?       13:17

11          A. They advise us in all of our rules and       13:17  
12        regulations that go in for each sport for safety.       13:18  
13        For instance, concussion, heat illness, sudden       13:18  
14        cardiac arrest, whether we are making modifications       13:18  
15        to practice schedules based on their -- their       13:18  
16        expertise.       13:18

17           And so they will make recommendations to       13:18  
18        us for modifying sports to make it more safe.       13:18

19          Q. So who makes up the Sports Medicine       13:18  
20        Committee?       13:18

21          A. There's a variety of doctors and athletic       13:18  
22        trainers. I believe there is -- I mean, there is a       13:18  
23        number of them. At least 12. I'm not sure of the       13:18  
24        exact number because they come off and on. But       13:18  
25        yeah. So they -- that's who makes it up is a       13:18

1 variety of medical personnel. 13:18  
2 Q. And do they report to you? 13:19  
3 A. They would make recommendations to me to 13:19  
4 give to the Board of Directors if we happen to have 13:19  
5 changes about -- sport-specific things, practice, 13:19  
6 things like that. Things that are not in the rule 13:19  
7 book, but they are modifications or rules that they 13:19  
8 would apply. 13:19  
9 Heat illness is a big example. They are 13:19  
10 providing recommendations on how long a practice is, 13:19  
11 what you are allowed to do at a practice, and things 13:19  
12 like that. 13:19  
13 Q. Do you happen to know if anyone from the 13:19  
14 West Virginia Legislature spoke with anyone from the 13:19  
15 Sports Medicine Committee before H.B. 3293 was 13:19  
16 passed? 13:19  
17 A. Not that I know of. 13:19  
18 MS. KANG: So I think now might be a good 13:19  
19 time for a five- to ten-minute break, just let you 13:19  
20 stretch your legs a little bit. 13:20  
21 THE WITNESS: Okay. 13:20  
22 MS. KANG: Roberta, are you all right with 13:20  
23 that? 13:20  
24 MS. GREEN: Yes. I think it's a good 13:20  
25 time. 13:20

1 MS. KANG: All right. So why don't we -- 13:20  
2 why don't we take a break until about 1:30. 13:20  
3 THE WITNESS: Okay. 13:20  
4 THE VIDEOGRAPHER: This marks the end of 13:20  
5 Media Number 1. Going off the record. The time is 13:20  
6 1:20. 13:20  
7 (Brief recess.) 13:34  
8 THE VIDEOGRAPHER: This marks the 13:34  
9 beginning of Media Number 2 in the deposition of 13:34  
10 30(b) (6) Witness Bernie Dolan. 13:34  
11 Back on the record. The time is 1:35. 13:35  
12 BY MS. KANG: 13:35  
13 Q. Mr. Dolan, before I move on to my next 13:35  
14 topic, I just want to ask you two more quick 13:35  
15 questions about the Sports Medicine Committee. 13:35  
16 To your knowledge, has the Sports Medicine 13:35  
17 Committee or anyone from that committee ever made a 13:35  
18 recommendation regarding transgender participation 13:35  
19 in athletics? 13:35  
20 A. I don't believe it's ever been on the 13:35  
21 agenda, no. 13:35  
22 Q. Do you know if the Sports Medicine 13:35  
23 Committee has ever made a recommendation on girls 13:35  
24 playing on boys' teams? 13:35  
25 A. Not in my tenure here, no. I don't know 13:35

1 about previous. 13:35

2 Q. All right. So I'm going to have a similar 13:35

3 set of questions next. So just diving a little bit 13:35

4 more into the Commission's role at -- role in 13:35

5 sports. 13:35

6 Can you tell me -- I know you mentioned 13:35

7 some earlier -- what factors are currently used to 13:36

8 determine a student's eligibility? 13:36

9 A. Number one is do they live with their -- 13:36

10 are they enrolled in the school; 13:36

11 Number two, do they live with their 13:36

12 parents; 13:36

13 Number three, do they reside in the 13:36

14 district where their school is; 13:36

15 What's -- what's their age as of 13:36

16 August 1st of the -- that current year; 13:36

17 Are they playing on any other teams 13:36

18 outside the school team. 13:36

19 Those are the majority -- and do they have 13:36

20 a 2.0. 13:36

21 Those are the majority of the eligibility 13:36

22 reasons that somebody might not be eligible for a 13:36

23 period of time. 13:36

24 Q. If I could just put a pin in that. 13:36

25 So a student could be ineligible for a 13:36

1       certain period of time and then gain eligibility?                   13:36  
2       A.     Yes.                                                                   13:37  
3       Q.     And the factors that are used to determine               13:37  
4       a student's eligibility -- are those the rules and               13:37  
5       regulations in the handbook plus the rules                       13:37  
6       promulgated by the State Board of Education?                  13:37  
7       A.     It is the -- the rules that are in our                  13:37  
8       rule book, as well as the 2.0, which is the                      13:37  
9       West Virginia Department of ED's rule, State Board           13:37  
10      of Education.                                                           13:37  
11               It's in our rule book, but it's not                       13:37  
12           technically our rule, but it's for all of our               13:37  
13           member -- all of our public schools, and our private   13:37  
14           schools follow it too.                                           13:37  
15       Q.     Do the -- do the county boards of                       13:37  
16       education in West Virginia have any rules that               13:37  
17       determine a student's eligibility?                               13:37  
18       MS. GREEN: And I'll just object to the                       13:37  
19           form.                                                           13:37  
20           THE WITNESS: They are not supposed to                       13:37  
21           have any rules additional than ours. They have               13:38  
22           given over the rights of overseeing sports to the       13:38  
23           SSAC.                                                           13:38  
24       BY MS. KANG:  
25       Q.     When a student's eligibility is in                       13:38

1 dispute, who makes the final determination as to 13:38  
2 that student's eligibility? 13:38  
3 A. I would make the initial -- well, the 13:38  
4 school makes the initial call. I would then either 13:38  
5 verify or overturn their decision based upon the 13:38  
6 facts. 13:38  
7 And then if they're not happy with the 13:38  
8 answer that I get, they want to appeal that, they 13:38  
9 take that to the Board of Directors. And if they 13:38  
10 are -- if my ruling is sustained at the Board of 13:38  
11 Directors, they have a Board of Review that they 13:38  
12 could go to to get one final opportunity for a 13:38  
13 waiver. 13:38  
14 Q. And the Board of Review is that different 13:39  
15 from the Board of Control? 13:39  
16 A. It is. The Board of Review is the final 13:39  
17 Board that has seven members and may or may not be 13:39  
18 connected to the schools. It's more general. But 13:39  
19 they are appointed by the State Board of Education. 13:39  
20 Q. Is the Board of Review a part of the 13:39  
21 Commission? 13:39  
22 A. They are appointed by the Board of -- or 13:39  
23 the State Board of Education. So I think you've 13:39  
24 seen them say WVSSAC Board of Review, but we have no 13:39  
25 input as to whether or not -- who the members are. 13:39

1 Q. Are any Commission members currently part 13:39  
2 of the Board of Review? 13:39  
  
3 A. There may be one member who is a Board 13:39  
4 office personnel who also serves on the 13:40  
5 Commission -- or on the Board of Review as the 13:40  
6 athletic director's association, but she is not a 13:40  
7 member -- she's not an employee of one of the 13:40  
8 schools. She works at the county office. 13:40  
  
9 Q. Which county office? 13:40  
  
10 A. I believe Lewis County office. 13:40  
  
11 Q. Okay. So I want us to go back to 13:40  
12 Exhibit 3. And this will be Page 16 of the pdf. 13:40  
13 And in the bottom right-hand corner it will be Bates 13:40  
14 stamped VSV- -- WVSSAC000133. And let me know 13:40  
15 whenever you get a chance to review it. 13:40  
  
16 MS. GREEN: And, Ms. Kang, what was the 13:40  
17 pdf page? 13:41  
  
18 MS. KANG: Sure. It's Page 16. 13:41  
  
19 MS. GREEN: 15 or 16? 13:41  
  
20 BY MS. KANG: 13:41  
  
21 Q. 16. 1,6. 13:41  
  
22 A. Okay. I'm at 14 now. 13:41  
  
23 MS. GREEN: Sorry. 13:41  
  
24 THE WITNESS: Okay. 13:41  
  
25 MS. GREEN: And what does it read at the 13:41

1 bottom? 13:42  
2 BY MS. KANG: 13:42  
3 Q. WVSSAC000133. 13:42  
4 A. Yep. Okay. Yes. 13:42  
5 Q. At the top of Exhibit 3, Page 16, you'll 13:42  
6 note it says, "Title 127 Legislative Rule." 13:42  
7 Do you know what a legislative rule is? 13:42  
8 A. I assume -- no. All of our rules are 127. 13:42  
9 So I think that's the area that we are in. But I 13:42  
10 would probably be guessing if I did, you know. 13:42  
11 MS. GREEN: Yeah. 13:42  
12 THE WITNESS: Yeah. 13:42  
13 BY MS. KANG: 13:42  
14 Q. Do you know who promulgated this specific 13:42  
15 rule? 13:42  
16 MS. GREEN: I'll just object to the form. 13:42  
17 THE WITNESS: Well, our rules have been in 13:42  
18 place since 1916. So over time, all of our rules 13:42  
19 have had some modification every year. 13:43  
20 So as far as when that particular rule, 13:43  
21 the most current part, I couldn't tell you. 13:43  
22 It's probably -- well, it says it was 13:43  
23 effective in September 9 of 2019. So that means 13:43  
24 there was a rule change at the Board of Control in 13:43  
25 2019. 13:43

1 BY MS. KANG: 13:43  
2 Q. Okay. I just want to draw your attention 13:43  
3 to the section on the same page it says "127-1-2 13:43  
4 Name." 13:43  
5 And in this paragraph -- I'll read out a 13:43  
6 section. But take your time reading it as well. 13:43  
7 It says [as read]: 13:43  
8 "Extracurricular activities of the 13:43  
9 students in the public secondary 13:43  
10 schools are controlled pursuant to 13:43  
11 W. Va. Code 18225, and authority for 13:43  
12 the delegation of such control to the 13:43  
13 Commission is granted by statute." 13:44  
14 A. Yes. 13:44  
15 Q. Now, did I -- did I read this correctly? 13:44  
16 A. You did. 13:44  
17 Q. Is this statement accurate? 13:44  
18 A. I believe it's accurate. But it's not 13:44  
19 inclusive if that's the -- because it's -- we have 13:44  
20 private schools as members also. 13:44  
21 But the legislature apparently, by 13:44  
22 statute, only dealt with the public schools. 13:44  
23 Q. Do you know how many private schools are 13:44  
24 part of your membership? 13:44  
25 A. Somewhere around 20. I don't know the 13:44

1 exact number. 13:44  
2 Q. Are you familiar at all with West Virginia 13:44  
3 Code 18225? 13:44  
4 A. Yes. 13:44  
5 Q. What is your understanding of it? 13:44  
6 MS. GREEN: I'll just object to the extent 13:44  
7 it would call for a legal conclusion. 13:44  
8 THE WITNESS: It was when they authorized 13:45  
9 the WVSSAC. 13:45  
10 BY MS. KANG: 13:45  
11 Q. What do you mean "authorized WVSSAC"? 13:45  
12 A. We had been an organization since 1916. 13:45  
13 And in the late '60s, they -- for some reason they 13:45  
14 put us in the code, I guess. 13:45  
15 Q. What does "extracurricular activities" in 13:45  
16 this section mean? 13:45  
17 A. It would be sports and band. 13:45  
18 Q. Does it include club sports? 13:45  
19 A. No. Not -- not in terms of the WVSSAC, 13:45  
20 no. 13:45  
21 Q. When does a club sport become a sport that 13:46  
22 is controlled by the WVSSAC? 13:46  
23 A. When there is more than 30 -- more than 20 13:46  
24 we can recognize it. 13:46  
25 At 32 teams, when there are 32 individual 13:46

1 teams, our Board can authorize a championship for 13:46  
2 one class. 13:46  
  
3 If there is 50 percent of our 13:46  
4 membership -- of the high school membership, they 13:46  
5 could authorize two classes; 75 percent they could 13:46  
6 authorize three. 13:46  
  
7 Q. So I'm going to draw your attention now 13:46  
8 staying on the same page on Exhibit 3 to the section 13:46  
9 that says, "127-1-3 Goals." 13:46  
  
10 And I'm also going to refer you to the 13:46  
11 section that says "3.1." And I'll read it out loud. 13:46  
12 And feel free to take your time reading it as well. 13:46  
  
13 [As read]: 13:46  
  
14 "This Commission, through the 13:46  
15 employment of instrumentalities 13:46  
16 hereinafter established, shall 13:47  
17 supervise and control interscholastic 13:47  
18 athletics and band activities among 13:47  
19 member schools." 13:47  
  
20 A. Okay. 13:47  
  
21 Q. Did I read this correctly? 13:47  
  
22 A. You did. 13:47  
  
23 Q. Is this statement accurate? 13:47  
  
24 MS. GREEN: Object to form. 13:47  
  
25 THE WITNESS: Yes. 13:47

1	BY MS. KANG:	13:47
2	Q. What does "supervise and control	13:47
3	interscholastic athletics" mean?	13:47
4	MS. GREEN: Object to the form.	13:47
5	THE WITNESS: Provide the rules and make	13:47
6	sure that everybody is following the rules.	13:47
7	BY MS. KANG:	13:47
8	Q. And how do you make sure that everyone is	13:47
9	following the rules?	13:47
10	A. Well, usually it -- you know, it's brought	13:47
11	to our attention either through members of the	13:47
12	public, schools in particular. Sometimes we see	13:47
13	violations in the newspaper, and we follow up on	13:47
14	them.	13:48
15	Q. By "follow up," you mean you reach out to	13:48
16	the individual member school?	13:48
17	A. Yes. And ask them for a written response	13:48
18	as to what the allegation might be.	13:48
19	Q. And do you have a rough estimate of how	13:48
20	many violations happen a year?	13:48
21	A. How many violations? Or how many times	13:48
22	are we called about a violation?	13:48
23	Q. Let's say, how many times you are called	13:48
24	for a violation.	13:48
25	A. If I had to guess, it would probably be	13:48

1       two or three a month. Not counting the appeals --                   13:48  
2       the student appeals.                                                   13:48  
  
3       Q.     How does a school stop being a member of                   13:48  
4       the WVSSAC?                                                           13:48  
  
5       A.     To be honest with you, I'm not sure how a                   13:49  
6       public school does.                                                   13:49  
  
7                  The private school simply writes us a                   13:49  
8       letter and says, "We no longer want to be a member           13:49  
9       of your organization." There's no penalty for                   13:49  
10      withdrawal.                                                           13:49  
  
11      Q.     Is there a reason why it's a different                   13:49  
12      rule for a private school versus a public school?           13:49  
  
13      A.     I guess a public could withdraw.                   13:49  
  
14      Q.     To your knowledge, has any public school           13:49  
15      ever withdrawn?                                                   13:49  
  
16      A.     No. Just -- they have consolidated; and,           13:49  
17      therefore, they become a new school, or they've           13:49  
18      closed and have been absorbed into a new school.           13:49  
19      But, to my knowledge, no public school has ever not   13:49  
20      been a member.                                                   13:49  
  
21      Q.     Are all public schools in West Virginia           13:49  
22      currently members?                                           13:49  
  
23      A.     All public secondary schools 6 through 12,           13:49  
24      yes.                                                           13:49  
  
25      Q.     If a school is not a member of the                   13:49

1       Commission, could it still offer interscholastic                   13:49  
2       sports?                                                                   13:49  
3       A.     Yes.                                                           13:49  
4       Q.     Can a school that is not a member compete           13:50  
5       with member schools?                                                   13:50  
6       A.     As long as they are a school, yes.                   13:50  
7       Q.     So now I would like to draw your attention           13:50  
8       to Page 17 of Exhibit 3, it should be just the next       13:50  
9       page down.                                                           13:50  
10      And I'll ask you to look at the paragraph                   13:50  
11      that starts "127-1-4. Membership."                           13:50  
12      A.     Okay.                                                           13:50  
13      Q.     And that paragraph says [as read]:                   13:50  
14                  "The WVSSAC shall be composed of the                   13:50  
15                  principals or designee, of those public                   13:50  
16                  or private secondary schools which have               13:50  
17                  certified in writing to the State                       13:50  
18                  Superintendent of Schools of                       13:50  
19                  West Virginia [paren] (State                       13:50  
20                  Superintendent) that they have elected               13:50  
21                  to delegate the control, supervision,               13:50  
22                  and regulation of their interscholastic               13:50  
23                  athletic and band activities."                       13:50  
24      Did I read that correctly?                                       13:50  
25      A.     Yes.                                                           13:50

1 Q. Is this statement accurate? 13:51  
2 MS. GREEN: Object to the form. 13:51  
3 THE WITNESS: Yes. 13:51  
4 BY MS. KANG: 13:51  
5 Q. What does it mean to "delegate the 13:51  
6 control, supervision, and regulation of their 13:51  
7 interscholastic athletic and band activities"? 13:51  
8 MS. GREEN: Object to the form. 13:51  
9 THE WITNESS: It means that the WVSSAC and 13:51  
10 its member schools will write rules and everybody 13:51  
11 will follow them. 13:51  
12 And so they can't have rules of their own 13:51  
13 that are separate from the rules that we have all 13:51  
14 agreed to. 13:51  
15 BY MS. KANG: 13:51  
16 Q. So just to be a clear, a member school 13:51  
17 cannot issue its own rules -- is that -- for 13:51  
18 interscholastic athletics; is that right? 13:51  
19 A. Not if it's in conflict with our rule. 13:51  
20 Q. Can it issue rules that are not in 13:51  
21 conflict with the SSAC rules? 13:51  
22 A. Sure. 13:51  
23 Q. Did Bridgeport Middle School delegate its 13:52  
24 control, supervision, and regulation of 13:52  
25 interscholastic athletic activities to the 13:52

2 A. I'm sure they did at one time, yes. 13:52

3 Q. So we're going to stay on the same page, 13:52

4 but I'm going to draw your attention to the section 13:52

5 that starts with 4.2.b. Says [as read] : 13:52

6 "The principal or designee is and 13:52

7 shall be responsible for conducting 13:52

## interscholastic athletic

and band activities of the school in

accordance with the constitution,

11 bylaws, rules and regulations of the

12 Commission which have been adopted by

13 the Board of Control of the Commission

14 for the governing of such

15 activities." 13:52

16 A. Okay. 13 : 52

17 Q. Did I read this correctly? 13:52

18 A. Yes. 13:52

19 Q. Do you believe this statement is accurate? 13:52

20 MS. GREEN: Object to the form. 13:52

21 THE WITNESS: Yes. 13:52

22 BY MS. KANG: 13:52

Q. What happens if a principal or a designee 13:52

24 breaks one of the Commission's rules? 13:53

A. There's a -- depends upon what the rule is 13:53

1 and how often, it could be a letter of discipline, 13:53  
2 it could be a verbal warning, or it could go all the 13:53  
3 way up to suspension or fine. 13:53

4 Q. So am I right that, when a member school 13:53  
5 makes a determination of what students are eligible 13:53  
6 to play secondary sports, it has to follow the rules 13:53  
7 and regulations of the Commission? 13:53

8 A. Yes. 13:53

9 Q. So now I'm going to ask you to scroll down 13:53  
10 two more pages to Page 19. It should be stamped 13:53  
11 WVSSAC000136 of Exhibit 3. Let me know whenever 13:53  
12 you're there. 13:53

13 A. Okay. We're there. 13:53

14 Q. I'm sorry. Let me actually take you to 13:54  
15 Page 20. That's Bates stamped -137 of Exhibit 3. 13:54

16 A. Okay. 13:54

17 Q. So in the section that says "127-1-8. 13:54  
18 Board of Directors," it says [as read]: 13:54

19 "The Board of Directors shall have 13:54  
20 authority to administer the regulations 13:54  
21 of the WVSSAC." 13:54

22 Did I read that correctly? 13:54

23 A. You did. 13:54

24 Q. Do you believe the statement is accurate? 13:54

25 A. Yes. 13:54

1	Q. What does administer the regulations of	13:54
2	the WVSSAC mean?	13:54
3	MS. GREEN: Object to the form.	13:54
4	THE WITNESS: Make sure everybody is	13:54
5	following the rules as written and interpreted.	13:54
6	(Simultaneously speaking.)	13:54
7	BY MS. KANG:	13:54
8	Q. By "interpreted," who --	13:54
9	A. The --	13:55
10	Q. -- makes -- oh, sorry.	13:55
11	A. Just --	13:55
12	Q. Did you --	13:55
13	A. As the rules are written.	13:55
14	Q. Does it mean anything else?	13:55
15	A. No.	13:55
16	Q. I'm going to ask you to scroll one more	13:55
17	page down to the page that's Bates stamped	13:55
18	WVSSAC -138. It should be Page 21 of the pdf of	13:55
19	Exhibit 3.	13:55
20	A. Okay.	13:55
21	Q. So I'll draw your attention to	13:55
22	Section 8.5, which says [as read]:	13:55
23	"The Board of Directors shall have	13:55
24	power to decide all cases of	13:55
25	eligibility of students and	13:55

1 participants in interscholastic 13:55  
2 athletic and band activities. The 13:55  
3 Board may also exercise discretionary 13:55  
4 powers it may deem necessary for the 13:55  
5 furtherance of education and 13:55  
6 interscholastic athletic and band 13:55  
7 activities in the secondary schools of 13:56  
8 West Virginia." 13:56  
9 Did I read that correctly? 13:56  
10 A. You did. 13:56  
11 Q. Do you believe this statement is accurate? 13:56  
12 MS. GREEN: Object to the form. 13:56  
13 THE WITNESS: Yes. 13:56  
14 BY MS. KANG: 13:56  
15 Q. What does it mean "Shall have the power to 13:56  
16 decide all cases of eligibility of students and 13:56  
17 participants in interscholastic athletic and band 13:56  
18 activities"? 13:56  
19 MS. GREEN: Object to form. 13:56  
20 THE WITNESS: If I have -- if the school 13:56  
21 or I have determined somebody to be ineligible, they 13:56  
22 can grant a waiver to make them eligible. 13:56  
23 BY MS. KANG: 13:56  
24 Q. Can anyone other than the Commission grant 13:56  
25 a waiver? 13:56

1           A. Well, the Commission cannot. The Board of       13:56  
2 Directors can. And then the Board of Review can.       13:56  
3 But the -- the office itself cannot grant waivers.       13:56  
4           I'll take that back.                                   13:56  
5           I can grant a waiver if it's been ruled       13:56  
6 before in a similar fashion by the Board, but I       13:57  
7 don't have -- I don't execute that.                   13:57  
8           Q. So is it fair to say that if the Board of       13:57  
9 Review issues a determination of a student's       13:57  
10 eligibility and the current student before you has a   13:57  
11 similar set of facts, you can rely on that previous   13:57  
12 determination?                                           13:57  
13           MS. GREEN: Object to the form.               13:57  
14           THE WITNESS: The rule says that, but       13:57  
15 they're never -- I've yet to find two cases that are   13:57  
16 exactly similar. So...                                   13:57  
17 BY MS. KANG:                                           13:57  
18           Q. But you have the ability to -- to do so?   13:57  
19           A. It says that we have the ability to do so,   13:57  
20 yes.                                                   13:57  
21           Q. So now I'd like to -- we're staying on the   13:57  
22 same page -- draw your attention to Paragraph 8.7   13:57  
23 and 8.8.                                           13:57  
24           So I'll read Paragraph 8.7 first. It says   13:57  
25 [as read]:                                           13:57

1                   "At the request of the Board of                   13:58  
2                   Directors, a Deputy Board Member may                   13:58  
3                   investigate matters of eligibility and                   13:58  
4                   other violations of the rules and                   13:58  
5                   regulations of the WVSSAC. The Deputy                   13:58  
6                   Board Member shall submit to the Board                   13:58  
7                   of Directors a written report of                   13:58  
8                   findings and recommendations for                   13:58  
9                   disposition of the case(s)."                   13:58  
10                  Did I read that correctly?                   13:58  
11                  A. You did.                                   13:58  
12                  Q. Do you believe this statement is accurate?           13:58  
13                  MS. GREEN: Object to form.                   13:58  
14                  THE WITNESS: Yes.                           13:58  
15                  BY MS. KANG:                                   13:58  
16                  Q. When would the Board of Directors request           13:58  
17                  an investigation into matters of eligibility?           13:58  
18                  A. If something was brought to them by a                   13:58  
19                  member school or the public at large.                   13:58  
20                  Q. Are there any Deputy Board Members                   13:58  
21                  currently?                                   13:58  
22                  A. There are ten.                           13:58  
23                  Q. Who do they report to?                   13:58  
24                  A. They have very few -- very few                   13:58  
25                  responsibilities. We have not asked them to                   13:59

1 investigate. We -- you know, we feel like it has 13:59  
2 put some them in difficult positions. So most of 13:59  
3 the investigations come out of our office. 13:59

4 Q. Can you tell me a little bit more about 13:59  
5 putting them in difficult positions; what you mean 13:59  
6 by that. 13:59

7 A. If they have to go into somebody else's 13:59  
8 school and make a determination on eligibility or 13:59  
9 where somebody lives, it could be a rival school and 13:59  
10 people might not want them there. 13:59

11 So, you know, we have taken it over 13:59  
12 because it's unbiased if we're looking at it. 13:59

13 Q. So are the Deputy Board Members designees 13:59  
14 or members of the member school? 13:59

15 A. They are principals of a member school, 13:59  
16 yes. 14:00

17 Q. So now on Paragraph 8.8 it says [as read]: 14:00  
18 "The Board of Directors shall have 14:00  
19 the power to investigate through the  
20 Deputy Board Member, or in  
21 such other manner as may be found  
22 advisable, matters of eligibility and  
23 other violations of rules when the  
24 Board deems it advisable to do so on  
25 the basis of information furnished,

1 even though a formal protest is not  
2 filed."  
3 Did I read that correctly? 14:00  
4 A. You did. 14:00  
5 Q. Is this statement accurate? 14:00  
6 MS. GREEN: Object to the form. 14:00  
7 THE WITNESS: It is. 14:00  
8 BY MS. KANG: 14:00  
9 Q. So when would the Board -- when would the 14:00  
10 Board deem it advisable to investigate matters of 14:00  
11 eligibility even without formal protest? 14:00  
12 A. Sometimes they -- 14:00  
13 MS. GREEN: Object to the form. 14:00  
14 I'm sorry. 14:00  
15 THE WITNESS: Oh. I'm sorry. 14:00  
16 Sometimes they get anonymous letters that 14:00  
17 would supply some information; and, you know, they 14:00  
18 would -- now they would ask us because I also can 14:00  
19 investigate. And so we would do it and then -- 14:00  
20 instead of our Board -- Deputy Board just because we 14:01  
21 don't want to put them in a position where they 14:01  
22 would be ruling on a -- sometimes a competitor. 14:01  
23 BY MS. KANG: 14:01  
24 Q. And what is the difference between a 14:01  
25 formal protest versus an informal protest? 14:01

1           A. A formal protest would be somebody's --           14:01  
2       has written it and put their name to it.           14:01  
3           Informal would be an anonymous letter or a   14:01  
4       phone call.                                           14:01  
5           Q. So I'm going to ask you to scroll one page   14:01  
6       down in Exhibit 3 to the page that is Bates       14:01  
7       Stamped -139. It should be Page 22 of the pdf.   14:01  
8           A. Okay.                                           14:01  
9           Q. So I am looking at Section 127-1-9 titled   14:01  
10       "Funds."                                           14:01  
11           A. Okay.                                           14:01  
12           Q. How -- how is the Commission funded?      14:01  
13           A. All of our revenue comes from championship   14:02  
14       events, ticket sales at championship events;      14:02  
15           Regional basketball ticket sales;          14:02  
16           Playoffs for football;                        14:02  
17           Registering of officials;                    14:02  
18           Coaches Education;                            14:02  
19           And corporate partnership.                    14:02  
20           Q. Are there any other sources of revenue?    14:02  
21           A. None of any significance.                   14:02  
22           Q. By "none of any significance," what do you   14:02  
23       mean?                                                14:02  
24           A. There would be maybe some fines in there   14:02  
25       for people -- coaches not paying -- or not      14:02

1 evaluating their officials or not putting scores in. 14:02  
2 Things like that. 14:02  
3 Q. How much money are those fines usually? 14:02  
4 A. \$25 or \$50 or \$10, depending upon what it 14:02  
5 is for. 14:03  
6 Q. Now, you mentioned the Coaches Education. 14:03  
7 Could you tell me a bit more about what that is. 14:03  
8 A. The legislature requires that our coaches 14:03  
9 who are non-teachers must have a Coaches Education. 14:03  
10 And this is a State Board of Education. But they 14:03  
11 have charged us with providing the education, but 14:03  
12 State Board of Education would do the certification. 14:03  
13 Q. Do the coaches pay the Commission for this 14:03  
14 education? 14:03  
15 A. They do. 14:03  
16 Q. Is the Commission a for-profit 14:03  
17 organization? 14:03  
18 A. We are not. 14:03  
19 Q. Do you receive any funds from the federal 14:03  
20 government? 14:03  
21 A. We received from -- some pandemic funds. 14:03  
22 But that was all through the small 14:03  
23 business authority. 14:04  
24 Q. Anything else? 14:04  
25 A. We have received GEAR funding from -- 14:04

1       through the Department of Education for monies to go     14:04  
2       back to the school through AEDs, wet globe bulbs         14:04  
3       [verbatim], reimbursement for travel, things like     14:04  
4       that.                                                             14:04  
  
5              Because everybody was in short -- low             14:04  
6       attendance, and so we were trying to find a way to     14:04  
7       help them with their money.                                 14:04  
  
8       Q.      By "gear funding," do you mean sports gear     14:04  
9       or...                                                             14:04  
  
10      A.     For them they also had limited attendance     14:04  
11     and limited games. So --                                     14:04  
  
12              Did I miss the question?                             14:04  
  
13              Okay. What was your question again?             14:04  
  
14      Q.     Oh. I just asked that by "gear funding,"     14:04  
15     did you mean sports gear?                                     14:04  
  
16      A.     No. No. It is -- I think it's -- GEAR is     14:05  
17     the program.                                                     14:05  
  
18      Q.     Understood.                                             14:05  
  
19              And was this all during the pandemic?         14:05  
  
20      A.     Yes, ma'am.                                             14:05  
  
21      Q.     Do you receive any funds from your member     14:05  
22     schools?                                                             14:05  
  
23      A.     The only funds we receive at this time     14:05  
24     would be fines that they would have to pay for not     14:05  
25     attending, not putting in scores.                             14:05

1                         Sometimes our events might be held at             14:05  
2                         their schools; so they would collect the gate and             14:05  
3                         then write us a check.                                             14:05  
4                         But that's pretty much all we get from the             14:05  
5                         schools.                                                             14:05  
6                         Q.     And how much are the fines?                             14:05  
7                         A.     For not putting in an evaluation, it's             14:05  
8                         \$10;                                                             14:05  
9                         For not doing your eligibility, it's \$25;             14:05  
10                        And if you don't put in a score, it's \$50.             14:05  
11                        Q.     Is any of the Commission's revenue shared             14:06  
12                        with the member schools?                                     14:06  
13                        A.     Yes.                                                     14:06  
14                        Q.     How is it shared?                                     14:06  
15                        A.     We -- we give reimbursement back to the             14:06  
16                        schools. Each sport has a different formula, but we     14:06  
17                        help with travel and meal money at most of the             14:06  
18                        events.                                                     14:06  
19                         At football they also get a commission of             14:06  
20                         the gate. 20 percent the first week, 15 percent the     14:06  
21                         second, 10 the third, and 5 at the championship.             14:06  
22                        Q.     If you had to estimate, what percentage of             14:06  
23                        Commission funds go to the member schools?             14:06  
24                        A.     When you say go to the schools, you mean             14:06  
25                        actually cash sent back to them? Or do you mean             14:07

1 services to the school? 14:07  
2 Q. Let's start with cash sent back to them. 14:07  
3 MS. GREEN: Object to the form. 14:07  
4 THE WITNESS: I would say \$300,000 out of 14:07  
5 a probably \$1.5 million budget. 14:07  
6 BY MS. KANG: 14:07  
7 Q. So what about services? 14:07  
8 A. The services -- oh. I'm sorry. 14:07  
9 Services would be higher because -- I 14:07  
10 would think it's probably closer to \$700,000 14:07  
11 depending upon what you call as "giving back". 14:07  
12 You know, if it's -- some people would say 14:07  
13 that the expenses to put on tournaments is a way to 14:07  
14 give back. 14:07  
15 Direct expenses would be, you know, the 14:07  
16 things that we are purchasing for them right now, 14:07  
17 which would be the AED and the wet globe bulb and 14:07  
18 the cooling submersion tubs. 14:07  
19 Q. So what -- what is encompassed in the term 14:08  
20 "services"? 14:08  
21 A. Services. Each -- each season we travel 14:08  
22 around the state to meet with all principals for a 14:08  
23 regional principal meeting. 14:08  
24 We also travel around the state to meet 14:08  
25 with each sport during each -- at the beginning of 14:08

1       each season to make sure -- we go over all the rules     14:08  
2       and regulations that are current.                             14:08  
  
3               Those are some of -- as well as expenses     14:08  
4       that we incur hosting the tournaments for them.     14:08  
  
5               And the coaches -- you know, we have -- we     14:08  
6       have expenses in materials for Coaches Education.     14:08  
  
7       Q.      I believe you mentioned you stopped     14:09  
8       collecting dues from your members.                         14:09  
  
9               Do you currently have any plans to resume     14:09  
10      collecting dues?                                             14:09  
  
11      A.      No.    We have a proposal from one of our     14:09  
12      principals for this year to strike out the -- all of     14:09  
13      the dues' language and inserting language in there     14:09  
14      that says, "Could resume at any time when     14:09  
15      necessary."                                                     14:09  
  
16      Q.      So, now, sticking with Exhibit 3, I'm     14:09  
17      actually going to ask you to go back up to Page 6 of     14:09  
18      the pdf and the Bates stamp is WVSSAC000123. And     14:09  
19      let me know whenever you get there.                         14:09  
  
20      A.      Okay.                                                     14:10  
  
21      Q.      So I'm going to direct you to the     14:10  
22      paragraph that begins with "Discrimination     14:10  
23      Prohibited."                                                     14:10  
  
24               Take your time reading it, and let me know     14:10  
25      whenever you are finished reading that paragraph.     14:10

1	A. [Witness reviews document].	14:10
2	Okay.	14:10
3	Q. Do you know who wrote this portion of the	14:10
4	handbook?	14:10
5	A. I do not.	14:10
6	Q. Do you know how long this portion has been	14:10
7	in the handbook?	14:10
8	A. I do not.	14:10
9	Q. Do you remember ever reviewing this	14:10
10	section of the handbook?	14:10
11	A. Yes.	14:10
12	Q. When did you review it?	14:11
13	A. I --	14:11
14	Q. Oh. Go ahead.	14:11
15	A. I would say a couple of years ago. We've	14:11
16	tried to have a book study and go through all of	14:11
17	these.	14:11
18	Q. When you reviewed it a couple of years	14:11
19	ago, did you believe the Commission was required to	14:11
20	comply with Title IX?	14:11
21	A. Yes.	14:11
22	Q. Is the Commission currently required to	14:11
23	comply with Title IX?	14:11
24	MS. GREEN: I'll just object to the form.	14:11
25	THE WITNESS: I would believe that the	14:11

1 schools are required to follow Title IX. But I 14:11  
2 believe we believe it also. 14:11  
3 BY MS. KANG: 14:11  
4 Q. Now, I want to turn your attention to the 14:11  
5 section below that titled "Beliefs and Objectives." 14:11  
6 Take a moment to read the first paragraph 14:11  
7 and let me know whenever you are done. 14:11  
8 A. [Witness reviews document]. 14:11  
9 Okay. 14:12  
10 Q. What are "proper ideals of sportsmanship," 14:12  
11 as written in this paragraph? 14:12  
12 MS. GREEN: Object to the form. 14:12  
13 THE WITNESS: Are you on Paragraph 1 or 3? 14:12  
14 BY MS. KANG: 14:12  
15 Q. Paragraph 1 [verbatim] of the Beliefs and 14:12  
16 Objectives section. 14:12  
17 A. What was your question again? 14:12  
18 Q. Sure. 14:12  
19 What are -- what are the proper ideals of 14:12  
20 sportsmanship? 14:12  
21 I'm sorry. I -- 14:12  
22 A. The -- 14:12  
23 Q. I am referring to Paragraph 3. You had it 14:12  
24 right the first time. 14:12  
25 A. Okay. 14:12

1                   Sportsmanship is that everybody's on a           14:12  
2       fair playing field. And the -- you should be           14:12  
3       gracious in losing and winning.                           14:13

4 Q. What do you mean by "fair playing field"? 14:13

5 MS. GREEN: Object to the form. 14:13

6 THE WITNESS: Same age. Same gender. 14:13

7 BY MS. KANG: 14:13

8 Q. Anything else? 14:13

10 When I say "same age," it would be same 14:13  
11 programatic level. So middle -- middle school kids 14:13  
12 cannot play against high school but freshmen can 14:13  
13 play against seniors. 14:13

14 Q. What are physical -- the physical and 14:13  
15 social benefits that are referenced in this 14:13  
16 paragraph? 14:13

17 A. Just good -- for one, just good health. 14:13  
18 Participation. Also, you know, we believe that 14:13  
19 it's -- the competitive part is good, and the 14:14  
20 training part is beneficial to the student athlete. 14:14

21 Q. Why do you believe it's beneficial? 14:14

22           A.     Studies we have read.   And as a           14:14  
23     participant a long time ago.                           14:14

24 Q. What does "partisanship and prejudice" 14:14  
25 mean in this paragraph? 14:14

1           A. Partisanship and prejudice would mean that       14:14  
2       it's equal. You know, one side -- especially       14:14  
3       with -- you know, as far as equipment or what -- if   14:14  
4       you come to a game, you can't have lush seats for   14:15  
5       you and the other team have foldable chairs and      14:15  
6       things like that. So that's part- -- partisan.       14:15  
7           You know, all the equipment at a game has       14:15  
8       to be the same equipment everybody is using. Same   14:15  
9       ball. Same rims. Everything is the same.       14:15  
10          Q. What do you mean by "prejudice" in this     14:15  
11       paragraph?       14:15  
12          A. Prejudice would mean, you know -- you     14:15  
13       know, is there some advantage to one team over   14:15  
14       another.       14:15  
15          Q. What sort of advantage are you referring   14:15  
16       to?       14:15  
17          A. Could be something as simple as a tarp    14:15  
18       over your bench as opposed to the other team not   14:15  
19       having it;       14:15  
20           Could be as simple as a heater. You might   14:16  
21       have a heater on a sideline at a cold game and they   14:16  
22       don't.       14:16  
23           So things that would make the game unfair   14:16  
24       that are outside of the game.       14:16  
25          Q. Is there anything else that you believe   14:16

1 would make the game unfair? 14:16

2 MS. GREEN: Object to the form. 14:16

3 THE WITNESS: There are probably other 14:16

4 things, but right off the top of my head not sure. 14:16

5 Could be something as simple as how far 14:16

6 you got to walk to your locker room in between 14:16

7 games. 14:16

BY MS. KANG: 14:16

9 Q. Do you believe that allowing transgender 14:16

10 students to participate on sports teams consistent 14:16

11 with their gender identity is consistent with the 14:16

12 goals identified in this paragraph? 14:16

13 MS. GREEN: Object to the form. 14:16

14 THE WITNESS: I believe our -- our Board 14:16

15 policy was that, if it was not safe or unfair 14:16

16 advantage, then it would be okay for them to 14:17

17 participate. 14:17

18 BY MS. KANG : 14:17

19 Q. Does Bridgeport Middle School 14:17

cross-country count as an interscholastic athletic? 14:17

21 A. It does. 14:17

22 MS. KANG: So I'm actually about to move 14:17

23 into the next session. I think we are up on an 14:17

24 hour. 14 : 17

25 Roberta, do you have preference as to 14:17

1 whether you want me to get started or you want to 14:17  
2 take a break now? 14:17

3 THE WITNESS: I'm good. 14:17

4 MS. GREEN: All right. Let's do -- 14:17

5 THE WITNESS: I can't go to the bathroom. 14:17

6 MS. GREEN: I know. Really no need for a 14:17  
7 bathroom break over here. 14:18

8 MS. KANG: All right. Well, if it's okay 14:18  
9 with you, we'll go on a little bit longer. 14:18

10 Let me know if you do need a break. 14:18

11 So we can take down Exhibit 3. 14:18

12 BY MS. KANG: 14:18

13 Q. And I want to talk a little bit about some 14:18  
14 of the statistics that the Commission turns over to 14:18  
15 various organizations. 14:18

16 So I'm going to introduce an exhibit that 14:18  
17 will be marked as Exhibit 4. 14:18

18 MS. KANG: And I'll let you know when it's 14:18  
19 in everyone's folders. 14:18

20 (Deposition Exhibit 4 was marked for 14:19  
21 identification and is attached hereto.) 14:19

22 MS. KANG: Exhibit 4 should now be in 14:19  
23 everyone's Marked Exhibit folder. 14:19

24 Let me know if anyone has trouble 14:19  
25 accessing it. 14:19

1 BY MS. KANG: 14:19  
2 Q. And, Mr. Dolan, let me know whenever you 14:19  
3 have it up. 14:19  
4 A. Okay. 14:19  
5 MS. GREEN: Counsel, was there a certain 14:19  
6 page in the exhibit? 14:19  
7 MS. KANG: Yeah. 14:19  
8 BY MS. KANG: 14:19  
9 Q. If you go to Page 6 to start, that would 14:19  
10 be great. And the Bates stamp is -365. 14:19  
11 MS. GREEN: I'm sorry. 14:19  
12 THE WITNESS: That's fine. 14:19  
13 Is this the "2016-'17 Participation 14:19  
14 Report"? 14:19  
15 BY MS. KANG: 14:19  
16 Q. Do you believe it is? 14:19  
17 A. Okay. 14:20  
18 [Witness reviews document]. 14:20  
19 Okay. 14:20  
20 Q. So I'm going to represent to you that this 14:20  
21 is a document that was produced by your counsel in 14:20  
22 response to one of plaintiff's discovery requests. 14:20  
23 If you want to read the text of the 14:20  
24 request, it's Request Number 15 in this same 14:20  
25 document. 14:20

1                   Do you recognize this document that is           14:20  
2 before you right now?                                                   14:20  
3                   A. I do.                                                   14:20  
4                   Q. What is it?                                           14:20  
5                   A. This is a participation -- the National           14:20  
6 Federation of High School keeps track of how many           14:20  
7 participants are in each sport, trying to find                                                                           14:20  
8 trends among the sports, which ones are growing,           14:20  
9 which ones are falling; and if they are falling, how           14:20  
10 come.                                                                   14:20  
11                   Q. What is the National Federation of State           14:21  
12 High School Associations?                                           14:21  
13                   A. It is the association of 51 members, the           14:21  
14 50 states plus Washington, D.C., and they primarily           14:21  
15 provide the sport-specific rules for almost all of           14:21  
16 our events.                                                           14:21  
17                   Q. How long have you provided these                   14:21  
18 statistics to the Federation?                                   14:21  
19                   A. To be honest with you, they've been           14:21  
20 tracking them, but I couldn't tell you how long we           14:21  
21 have.                                                                   14:21  
22                   Q. Do you think it's --                           14:21  
23                   A. I would assume.                                   14:21  
24                   Q. Go ahead.                                           14:21  
25                   A. I would assume -- it's a -- it's an           14:21

1 ongoing thing; so I would think it's probably been 14:21  
2 done for a number of years. 14:21  
3 Q. More than ten? 14:21  
4 A. Yes. 14:21  
5 Q. More than 20? 14:21  
6 A. Probably. 14:21  
7 Q. Why do you provide these statistics to the 14:21  
8 NFHS? 14:22  
9 A. They -- they gather them for the whole 14:22  
10 country to try to monitor which sports are growing 14:22  
11 in popularity and which ones might not be. And the 14:22  
12 ones that aren't, they're trying to look and see 14:22  
13 why. 14:22  
14 Q. I'm just going to ask you a few questions 14:22  
15 to help me understand how to read this chart. 14:22  
16 Did you prepare this document? 14:22  
17 A. I personally did not prepare it. But this 14:22  
18 is a document prepared by our office, yes. 14:22  
19 Q. Do you know who prepared this document? 14:22  
20 A. Alice Goodwin in our office. 14:22  
21 Q. What's her position? 14:22  
22 A. Secretary. 14:22  
23 Q. Is she your secretary? 14:22  
24 A. No. 14:22  
25 Q. Do you know which secretary she is? 14:22

1           A. Well, we don't all have specific           14:22  
2           secretaries. She works primarily with Greg Reed,           14:23  
3           but we all ask different people to do different           14:23  
4           things, depending upon what the level of activity           14:23  
5           going on in the office for that particular staff           14:23  
6           member is.                                           14:23

7           Q. What is Greg Reed's role?                   14:23

8           A. Assistant executive director.               14:23

9           Q. Do you contribute any information to this           14:23  
10          document?                                           14:23

11          A. This document is -- I personally do not.           14:23  
12          It's pulled from our website. And it probably -- it    14:23  
13          is self-populating, I believe. So she doesn't       14:23  
14          actually type it in there. They pull it from our     14:23  
15          eligibility sheets.                               14:23

16          Q. And who is "they"?                           14:23

17          A. Our -- our web designer created this form,      14:23  
18          and it self-populates from that form, from their     14:24  
19          eligibility.                                       14:24

20          Q. So in the second column of this chart, it      14:24  
21          says "Senior."                                   14:24

22                                                           14:24

23          A. "Senior" means "high school."               14:24

24          Q. So senior --                                   14:24

25          A. 9 through 12.                                   14:24

1 Q. So it's any grade from 9 to 12? 14:24  
2 A. It's a combination of 9 through 12, yes. 14:24  
3 Q. If we go over to the third column, the one 14:24  
4 that says "Male," what does that mean? 14:24  
5 A. That -- it's the same -- when we do our 14:24  
6 eligibility sheets by sport, for instance, football, 14:24  
7 football doesn't differentiate between boys and 14:24  
8 girls. It's -- they're asking for the number of 14:24  
9 participants. 14:25  
10 When you get to girls' track, it can only 14:25  
11 be done by girls; so, therefore, that -- that's why 14:25  
12 there's not -- there's a zero in girls' track for 14:25  
13 males and boys' track has a number but girls' does 14:25  
14 not. 14:25  
15 So football is the number of participants. 14:25  
16 So in the blue column under "Male," it would be the 14:25  
17 number of male -- or number of people in football. 14:25  
18 Could be male or female because our eligibility 14:25  
19 doesn't differentiate between the two. 14:25  
20 Q. So just to be clear, even if a girl plays 14:25  
21 on the football team, she will not show up in the 14:25  
22 column that says "Female" for football? 14:25  
23 A. That's correct. Because they're asking 14:25  
24 for the number of participants in football, and it's 14:25  
25 primarily football -- it's primarily a male sport. 14:26

1 So it falls under the male category. That's the 14:26  
2 best we could do for them. 14:26

3                   Similarly, cheer is primarily a cheer           14:26  
4     event, but there are boys. But there's no number in    14:26  
5     there. So we just -- it's just the total number in    14:26  
6     that -- for that particular sport.                       14:26

7 Q. Okay. Scroll all the way over to the 14:26  
8 gray-colored columns. They're labeled as 14:26  
9 "Mid/Junior." 14:26

10 | What does "Mid/Junior" mean? 14 : 26

11           A. It was either middle school or junior high 14:26  
12       and -- you know. I don't believe we have any more 14:26  
13       junior high. So probably could be fixed to say just 14:26  
14       middle school. 14:26

15 Q. What grades would those be? 14:26

16 A. 6th through 8. 14:26

17 Q. So now I'm going to ask you to -- to 14:26  
18 scroll down to Page 11. It will be Bates 14:27  
19 stamped -370. 14:27

20 Let me know whenever you get there. 14:27

21 A. Okay. 14:27

22 Q. So the last year that you produced this 14:27  
23 document is 2020 to 2021. 14:27

24                   Do you know when the 2021 to 2022           14:27  
25 statistics will be published?                                   14:27

1           A.    We submitted them over the summer.                                  14:27  
2           Obviously, our spring sports aren't -- aren't in                                  14:27  
3           place yet. So we wouldn't have numbers for them.                                  14:27  
4           Q.     For the 2021 to 2022 period, do you know                                  14:27  
5           if B.P.J. will be listed in the "Female" column or                                  14:27  
6           the "Male" column?                                                                          14:27  
7           MS. GREEN: Object to form.                                                          14:28  
8           THE WITNESS: Which team is she on?                                                  14:28  
9           BY MS. KANG:                                                                                  14:28  
10          Q.     She is on the cross-country team for                                  14:28  
11          girls.                                                                                          14:28  
12          A.     And then that's where she will be listed.                                  14:28  
13          Because it's just pulling the number off of the                                  14:28  
14          eligibility of that particular team.                                                  14:28  
15          Q.     And the numbers that are submitted, are                                  14:28  
16          they coming from the member schools themselves?                                  14:28  
17          A.     They -- the member schools have to submit                                  14:28  
18          their eligibility on our site. And from there,                                  14:28  
19          it takes the total of each school and puts them in                                  14:28  
20          their category.                                                                                  14:28  
21          Q.     So I'm going to ask you to scroll down one                                  14:28  
22          more page to the doc- -- to the document that is                                  14:28  
23          Bates Stamped -371.                                                                          14:28  
24          A.     Okay.                                                                                  14:28  
25          Q.     So this is also a document that was                                  14:28

1 produced by your counsel in response to one of 14:29  
2 plaintiff's discovery requests. 14:29

3 If you want the read the text of that 14:29  
4 request, you can look at Request 14 on Page -4 of 14:29  
5 this exhibit. 14:29

6 Do you recognize this document? 14:29

7 A. This is a form from the National 14:29  
8 Federation that puts our participation numbers into 14:29  
9 their chart. 14:29

10 So the numbers that came off of that chart 14:29  
11 for '18/'19 would match these numbers. 14:29

12 All those sports that are activities that 14:29  
13 are -- have zeros by them, those are activities or 14:29  
14 sports that we do not offer. But they are offered 14:29  
15 through the National Federation. 14:29

16 Q. So you do not -- you as a Commission do 14:29  
17 not make this form? 14:29

18 A. No. They send this back to us. This is 14:29  
19 basically a verification of the form we sent to 14:30  
20 them. 14:30

21 Q. So is it fair to say that the National 14:30  
22 Federation takes information that you give them and 14:30  
23 puts it into this form? 14:30

24 A. Yes, ma'am. 14:30

25 Q. So I noticed that the year only goes to 14:30

1        2018 to 2019. Is there a reason why we don't have        14:30  
2        the 2019 to 2020 statistics?                                          14:30

3           A. I don't know if that's the most recent           14:30  
4       one. Because obviously with COVID and them not           14:30  
5       working from the office for a long period of time, I   14:30  
6       don't know if they have not submitted the most      14:30  
7       recent years.                                                  14:30

8 Q. So in the column that says "Boys School," 14:30  
9 what does this column indicate? 14:30

10 A. Are we still on Page 7? 14:30

11 Q. Yes. We are -- we are on Page 12. 14:31

12 A. 12. Okay. 14:31

13 Q. The Bates stamp is -371. 14 : 31

14 A. And which one am I looking for? 14:31  
15 Q. Yeah. So if you go over, it's the fourth 14:31  
16 column. It says "Boys School." 14:31

17 A. Boys -- okay. 14:31

18 Q. Year. 14:31

19 A. These are -- these are the schools that 14:31  
20 are offering basketball. If you are looking at 14:31  
21 basketball, there is 124 schools who are offering 14:31  
22 boys' basketball. And there are 124 schools that 14:31  
23 are offering girls' basketball. 14:31

24 You'll notice that "Baseball" has 122. 14:31  
25 There are no girls -- there are no girls' baseball 14:31

1 teams. That's why it is a "0." 14:31  
2 Q. Got it. 14:31  
3 And then the boys participation, does that 14:31  
4 reflect that 3,052 boys participated of the 14:31  
5 124 schools that offer boys' basketball? 14:32  
6 A. Yes. 14:32  
7 And I would believe this is just high 14:32  
8 school. It's not middle school also. 14:32  
9 Q. Do you know if co-ed teams are reflected 14:32  
10 on the chart? 14:32  
11 A. Again, co-ed teams would be -- they would 14:32  
12 be reflected as the -- the majority sport. So, for 14:32  
13 instance, baseball, it could be co-ed if a girl 14:32  
14 wanted to play baseball. But she would be listed on 14:32  
15 the -- the school was offering boys' baseball -- or 14:32  
16 they are offering baseball, the girl would simply be 14:32  
17 listed on the eligibility and be counted as a 14:32  
18 baseball participant, not as a female. 14:33  
19 So in this -- this study that they are 14:33  
20 doing is simply the number of participants in that 14:33  
21 sport, not a breakdown of boys and girls if it's 14:33  
22 co-ed. 14:33  
23 Q. Who determines whether to make a team 14:33  
24 co-ed? 14:33  
25 A. Well, if you have enough boys and have 14:33

1       enough girls to have a team, then if we are offering      14:33  
2       boys and girls, then you have to have a separate      14:33  
3       team.                                                                  14:33  
  
4               For instance, cross-country, you can have      14:33  
5       one girl and she could make up a team or she could      14:33  
6       be the team. But if you only have one soccer girl,      14:33  
7       she couldn't be the team. So she would have to play      14:33  
8       with the boys. And that would be co-ed at the time.      14:34  
  
9       Q. Is it fair to say that what makes a sport      14:34  
10      co-ed depends on the sport?                                          14:34  
  
11       MS. GREEN: Object to the form.                                  14:34  
  
12       THE WITNESS: It depends on the sport -- I      14:34  
13      would say depends upon the participants.                          14:34  
  
14       If there are enough of each gender to      14:34  
15      participate, we would have separate -- separate      14:34  
16      championships.                                                          14:34  
  
17      BY MS. KANG:                                                          14:34  
  
18       Q. So is it fair to say that once a certain      14:34  
19      number of participants is reached for boys and      14:34  
20      girls, they have to be separate?                                  14:34  
  
21       A. At some point based on the number, we      14:34  
22      would make a recommendation to the Board of      14:34  
23      Directors that we now have enough to break them and      14:35  
24      have a stand-alone.                                                          14:35  
  
25       Q. Can you give me an example of when you      14:35

1 made that recommendation? 14:35  
2 A. We haven't made it yet. But I will tell 14:35  
3 you that we're -- you know, we have offered more 14:35  
4 opportunities for girls in golf. And our number of 14:35  
5 girls playing golf has gone up significantly. 14:35  
6 We'll watch the numbers. And, as time 14:35  
7 goes on, if we -- if the numbers continue to grow, 14:35  
8 then they will have the opportunity to have a 14:35  
9 stand-alone program for girls' golf. Right now, 14:35  
10 they play on the boys' team or the co-ed team. 14:35  
11 MS. KANG: So we can take down this 14:35  
12 exhibit, and I'm going to introduce a different 14:35  
13 document as the next exhibit, which I believe is 14:36  
14 Exhibit 5. 14:36  
15 (Deposition Exhibit 5 was marked for 14:36  
16 identification and is attached hereto.) 14:36  
17 MS. KANG: Exhibit 5 is now in everyone's 14:36  
18 Marked Exhibit folder. Please let me know if you 14:36  
19 have trouble accessing it. 14:36  
20 BY MS. KANG: 14:36  
21 Q. Mr. Dolan, let me know once you have it 14:36  
22 up. 14:36  
23 And once you have it up, if you could go 14:36  
24 to Page 5 of the pdf, that would be great. 14:36  
25 A. Okay. 14:36

1 Q. So I would like to draw your attention to 14:36  
2 Interrogatory Number 13 on Exhibit 5. 14:37  
3 What does "participation mixed as 14:37  
4 indicated to respond to demand" mean? 14:37  
5 A. "Identify all WVSSAC sponsored sports in 14:37  
6 which students may participate on a team designated 14:37  
7 as co-ed or mixed." 14:37  
8 Is that the question? And why cheer is 14:37  
9 considered mixed? 14:37  
10 Q. Yeah. That -- why don't we start there. 14:37  
11 Why is cheer considered mixed? 14:37  
12 A. It has both boys and girls. So it could 14:37  
13 be co-ed or mixed. 14:37  
14 Q. What is the difference between calling 14:37  
15 cheer mixed and saying that "participation mixed as 14:38  
16 indicated to respond to demand"? 14:38  
17 A. Basically because cheer almost always has 14:38  
18 boy members. Wrestling is starting to get a number 14:38  
19 of them. Baseball very seldom has -- it's very 14:38  
20 seldom a mixed sport. And football is very seldom. 14:38  
21 But golf is transitioning into its own sport. 14:38  
22 Q. By "seldom," do you mean girls seldom 14:38  
23 participate on those teams? 14:38  
24 A. That is correct. 14:38  
25 Q. Just to be clear, football is a boys' 14:38

1 team, but if a girl wants to play football, she 14:39  
2 would be permitted to play on that team? 14:39

3 A. That's correct. 14:39

4 Q. If a boy wanted to play on a girls' team, 14:39  
5 would they be permitted to? 14:39

6 A. No. 14:39

7 Q. Why not? 14:39

8 A. Because girls have been -- they've been 14:39  
9 denied opportunity in the past, and by allowing boys 14:39  
10 to participate on girls' teams that are strictly 14:39  
11 girls, for instance, girls' soccer, girls' 14:39  
12 basketball, volleyball and softball, that girls 14:39  
13 would then lose opportunity. 14:39

14 Q. Do you have any rules preventing a boy 14:39  
15 from playing on a girls' team? 14:39

16 A. Yes. 14:39

17 Q. What rule would that be? 14:39

18 A. I have to find it in my rule book. 14:40

19 Q. Why don't we go back to the rule book, and 14:40  
20 I'll ask you a few questions on that. 14:40

21 So we'll go back to Exhibit 3. 14:40

22 (Simultaneously speaking.) 14:40

23 THE WITNESS: I'm trying to -- 14:40

24 BY MS. KANG: 14:40

25 Q. And it should be -- 14:40

1 A. Try -- 14:40  
2 Q. It should be Exhibit 3. It should be 14:40  
3 Page 17, and the Bates stamp should end in -148. 14:40  
4 A. Page 17 talks about our membership. 14:40  
5 Q. Yes. I'm looking at Paragraph 3.8 of 14:40  
6 Exhibit 3 on -148. 14:40  
7 A. Okay. 14:40  
8 Q. Take a moment to read Paragraph 3.8 and 14:41  
9 let me know when you've had a chance to finish 14:41  
10 reading it. 14:41  
11 A. What page are you on again? Because I 14:41  
12 don't have 3.8. 14:41  
13 Q. No problem. It's page 17. The Bates 14:41  
14 stamp should end in -148. 14:41  
15 A. 17 of the pdf document or 17 of our -- 14:41  
16 that's numbered on our rule book? 14:41  
17 Q. This might be page -- this might be 17 14:41  
18 that's numbered in your rule book. My apologies. 14:41  
19 It's Page 31 of the pdf. 14:41  
20 A. Okay. We're getting there. 14:41  
21 MS. GREEN: We should have music to play 14:41  
22 through the... 14:41  
23 THE WITNESS: Okay. Scroll down. 14:41  
24 Okay. Yep. Yes. Yes. 3.8. 14:42  
25 ///

1	BY MS. KANG:	14:42
2	Q. Is that the rule that you were thinking of	14:42
3	that prevented a transgender boy from playing on a	14:42
4	girls' team?	14:42
5	A. Yes.	14:42
6	MS. GREEN: Object to the form, if I	14:42
7	can --	14:42
8	THE WITNESS: Okay. Back up?	14:42
9	MS. GREEN: Yes.	14:42
10	BY MS. KANG:	14:42
11	Q. Why was this rule enacted?	14:42
12	A. I would assume to -- it complies with	14:42
13	Title IX, but it's -- you know, we're trying to not	14:42
14	allow boys to participate in girls' events to either	14:42
15	hurt them or dominate them.	14:42
16	Q. When was this rule, Section 3.8, enacted?	14:42
17	A. I would have to find that out. I'd have	14:42
18	to go back through all of our rules and find when it	14:42
19	was -- when it was enacted.	14:42
20	Q. Do you believe that it was enacted within	14:43
21	the past five years?	14:43
22	A. No.	14:43
23	Q. Past ten?	14:43
24	A. No.	14:43
25	Q. Past 20?	14:43

1           A. I -- I'm not sure. I don't know if it's       14:43  
2 gone that far. But I would say a significant       14:43  
3 number, yes. I don't know if it's made it to 20.       14:43  
4           Q. Fair enough.                                       14:43  
5                                                                   14:43  
6                                                               14:43  
7                                                               14:43  
8           A. If there is a boys' team and a girls'       14:43  
9                                                               14:43  
10                                                               14:44  
11                                                               14:44  
12           Q. Yes.                                           14:44  
13           A. They cannot. If there is a team for them,       14:44  
14                                                               14:44  
15           Q. Let's go back to Exhibit 5.               14:44  
16                                                               14:44  
17                                                               14:44  
18                                                               14:44  
19                                                               14:44  
20                                                               14:44  
21           A. Okay.                                           14:44  
22           Q. What grades does junior varsity cover?       14:44  
23           A. It doesn't have a grade. It could be 9 to       14:44  
24                                                               14:44  
25                                                               14:44

1 will have just the varsity. Some will have varsity 14:45  
2 and j- -- junior varsity. And some will have 14:45  
3 varsity, junior varsity, and a freshman team. 14:45  
4 So just different designation of those 14:45  
5 teams. 14:45  
6 Q. What does junior varsity mean? 14:45  
7 A. Junior varsity -- 14:45  
8 MS. GREEN: I was just going to object to 14:45  
9 the form. 14:45  
10 THE WITNESS: Okay. 14:45  
11 When you have too many kids and you 14:45  
12 have -- you want an opportunity for them, you have a 14:45  
13 junior varsity as long as you can get a schedule for 14:45  
14 them. 14:45  
15 BY MS. KANG: 14:45  
16 Q. What does "varsity" mean? 14:45  
17 A. You are the team that participates for the 14:45  
18 state championships. 14:45  
19 Q. What does "freshman" mean? 14:45  
20 A. Some large schools want to give more 14:45  
21 opportunity to their student athletes. So they have 14:45  
22 too many kids for a junior varsity, JV; so they have 14:46  
23 a separate freshman program. 14:46  
24 Q. Just to be clear, if a student wants to 14:46  
25 play a sport that is not in this list -- so it's not 14:46

1 cheer, wrestling, baseball, football, or golf -- 14:46  
2 they have to join either the boys' or girls' team? 14:46  
3 A. I think that's everybody that is not 14:46  
4 included, yes. 14:46  
5 Q. One last question before we take a break. 14:46  
6 I would like to draw your attention to 14:46  
7 Page 9 of Exhibit 5, and this is the response to 14:46  
8 Interrogatory Number 14. 14:46  
9 A. Okay. 14:46  
10 Q. So just to be clear, to make sure I am 14:46  
11 reading this chart correctly, in the first row that 14:46  
12 starts with "Andrew Jackson Middle School," it 14:46  
13 indicates that one girl participated in wrestling. 14:47  
14 Is that an accurate -- is that an accurate 14:47  
15 interpretation? 14:47  
16 A. It is. 14:47  
17 Q. How do you collect these statistics? 14:47  
18 A. This was a survey of the schools because, 14:47  
19 when they do their eligibility, it doesn't 14:47  
20 distinguish between boys and girls. 14:47  
21 So in order to find out who is playing 14:47  
22 what sports, how many -- how many girls are 14:47  
23 participating in -- in the sports that allow boys 14:47  
24 and girls, the co-ed or mixed, we -- we have to 14:47  
25 survey them to find out. 14:47

1 Q. When was this survey done? 14:47  
2 A. In the last two weeks, I would imagine. I 14:47  
3 forget. I mean, it was in the last three -- two to 14:47  
4 three weeks. 14:47  
5 Q. Why did you survey the schools? 14:47  
6 A. Just to find out how many girls were 14:47  
7 participating in our -- since we don't have accurate 14:47  
8 data of how many girls are playing different sports, 14:48  
9 this was our opportunity to go ahead and -- and poll 14:48  
10 our membership. 14:48  
11 Not every school replied. And we don't 14:48  
12 have a way to verify it. It was just for us to have 14:48  
13 an idea. We looked -- 14:48  
14 Q. Are there any -- oh. Go ahead, please. 14:48  
15 A. We would look at this data, for instance, 14:48  
16 golf and wrestling, to determine how close we are to 14:48  
17 having its own sport. 14:48  
18 Q. Is this data the current data? Or is this 14:48  
19 data, like, a participation across all years -- 14:48  
20 A. And again -- 14:48  
21 Q. -- of all time? 14:48  
22 A. I believe -- you know, it wasn't a 14:48  
23 certified data. Schools were primarily listing 14:48  
24 second -- second -- or last year's spring sports and 14:48  
25 this year's winter and fall. 14:49

1                   So, obviously, they don't know how many           14:49  
2 baseball, softball, track, and tennis participants           14:49  
3 we have coming up because we haven't had our teams           14:49  
4 yet.                                                                   14:49  
  
5                   MS. KANG: Okay. I think now is a good           14:49  
6 time for everybody to take a break, if that is all           14:49  
7 right with you, Mr. Dolan.                                   14:49  
  
8                   THE WITNESS: Sure.                               14:49  
  
9                   Okay. Roberta, is that -- does that work   14:49  
10 for you?                                                           14:49  
  
11                  MS. GREEN: Sure. Thank you.                   14:49  
12                  MS. KANG: Of course.                           14:49  
  
13                  THE VIDEOGRAPHER: This marks the end of   14:49  
14 Media Number 2.                                               14:49  
  
15                  Going off the record. The time is 2:49.   14:49  
16                  (Brief recess.)                               14:59  
  
17                  THE VIDEOGRAPHER: This marks the           15:00  
18 beginning of Media Number 3 in the deposition of           15:00  
19 30(b) (6) Witness Bernie Dolan.                       15:00  
  
20                  Back on the record. The time is 3:01.   15:00  
21 BY MS. KANG:                                               15:00  
  
22 Q. Mr. Dolan, would it be harmful to a                   15:01  
23 student if they were forbidden from playing school   15:01  
24 sports?                                                       15:01  
  
25 MS. GREEN: Object to the form.                           15:01

1                   THE WITNESS: There are lots of kids who       15:01  
2                   are, I think, not allowed to participate for       15:01  
3                   whatever reason. It could be eligibility things.   15:01  
4                   So happens to a lot of kids right now.       15:01

5                   We do think there are benefits to       15:01  
6                   participation.                                   15:01

7                   BY MS. KANG:                                   15:01

8                   Q. What sort of benefits does playing a   15:01  
9                   school sport afford?                           15:01

10                  A. Giving an opportunity for leadership,   15:01  
11                  personal health, camaraderie, cooperation.   15:01

12                  Q. I want to talk a little bit about House   15:01  
13                  Bill 3293, or H.B. 3293, and a little bit more about   15:01  
14                  the Commission's policy for H.B. 3293 was enacted.   15:01

15                  A. Okay.                                   15:02

16                  Q. Do you believe that H.B. 3293 forbids   15:02  
17                  B.P.J. from playing on a girls' team?       15:02

18                  MS. GREEN: Object to the perform.       15:02

19                  THE WITNESS: I would believe it did   15:02  
20                  before the court case. Yes.                   15:02

21                  BY MS. KANG:                                   15:02

22                  Q. Have you ever talked to any organizations   15:02  
23                  outside of the State of West Virginia regarding   15:02  
24                  H.B. 3293?                                   15:02

25                  A. Not that I know of.                           15:02

1 Q. Have you ever talked to any organizations 15:02  
2 outside of West Virginia concerning transgender 15:02  
3 athletes generally? 15:02  
4 A. We may have talked -- you know, our 15:02  
5 National Federation, it was probably on a -- one of 15:02  
6 our either winter meetings or summer meetings there 15:02  
7 was probably a topic. 15:02  
8 And I would have to go back and look, but 15:02  
9 the state may have put up a presentation on whatever 15:02  
10 their -- whatever their rule was. 15:02  
11 Q. Do you remember when this meeting 15:03  
12 occurred? 15:03  
13 A. I do not. 15:03  
14 Q. Do you know which state proposed a rule? 15:03  
15 MS. GREEN: Object to the form. 15:03  
16 THE WITNESS: I believe the presentation 15:03  
17 was from Connecticut. 15:03  
18 BY MS. KANG: 15:03  
19 Q. Do you remember what the rule they 15:03  
20 proposed was? 15:03  
21 MS. GREEN: Object to the form. 15:03  
22 THE WITNESS: I don't know. They weren't 15:03  
23 proposing a rule; they were explaining their rule. 15:03  
24 BY MS. KANG: 15:03  
25 Q. Do you remember what their rule was? 15:03

1           A. I believe it was full participation by           15:03  
2 gender identity.                                                   15:03

3           Q. Okay. So I'm going to ask you a few           15:03  
4 questions about the Commission's policy. Before I           15:03  
5 do so, just to be totally clear on the record, I'm           15:03  
6 just going to give you some terms that I'll explain   15:04  
7 my definitions for. So whenever I ask you               15:04  
8 questions, this is what I mean.                           15:04

9           When I use the term "cisgender," I am           15:04  
10 referring to someone whose gender identity matches   15:04  
11 the sex they were assigned at birth. So, for           15:04  
12 example, if someone was assigned male at birth and   15:04  
13 they identify as a male, that person would be a       15:04  
14 cisgender boy.                                           15:04

15           When I use the term "transgender," I am   15:04  
16 referring to someone whose gender identity does not   15:04  
17 match the sex they were assigned at birth. So, for   15:04  
18 example, if someone was assigned male at birth but   15:04  
19 then they identify as female, that person would be a   15:04  
20 transgender girl or woman.                           15:04

21           And so for purposes of the questions I   15:04  
22 will be asking next, I'll be using these definitions   15:04  
23 for -- for clarity.                                   15:04

24           Are you all right with that?               15:04

25           A. Yes.                                       15:04

1	MS. GREEN: Objection to form.	15:04
2	THE WITNESS: Sorry.	15:04
3	Yes.	15:04
4	BY MS. KANG:	15:04
5	Q. And then you may already understand this,	15:04
6	but when I use the phrase "H.B. 3293," I am	15:04
7	referring to House Bill 3293.	15:04
8	Are you familiar with this bill?	15:05
9	A. Yes.	15:05
10	Q. To your knowledge, has a cisgender boy	15:05
11	ever played on a girl's sports team?	15:05
12	MS. GREEN: Objection to the form.	15:05
13	THE WITNESS: Not to my knowledge.	15:05
14	BY MS. KANG:	15:05
15	Q. To your knowledge, has it ever been raised	15:05
16	as an issue?	15:05
17	MS. GREEN: Object to the form.	15:05
18	THE WITNESS: No.	15:05
19	BY MS. KANG:	15:05
20	Q. Currently, if a cisgender girl wants to	15:05
21	play football, is she permitted to do so on the	15:05
22	boys' team?	15:05
23	A. Yes. Because there's no girls' team at	15:05
24	the moment.	15:05
25	Q. Before H.B. 3293 was enacted, did the	15:05

1       Commission allow transgender students to participate     15:06  
2       on sports teams consistent with their gender             15:06  
3       identity?                                                     15:06

4               MS. GREEN: Object to the form.                     15:06

5               THE WITNESS: Our policy ident- --                 15:06  
6       whatever the school identified them in WVEIS was how   15:06  
7       we recognize them.                                             15:06

8       BY MS. KANG:                                                     15:06

9               Q. Can you tell me a little bit more about       15:06  
10      this policy?                                                     15:06

11               MS. GREEN: Object to the form.                     15:06

12               THE WITNESS: Basically, it was to protect       15:06  
13      athletes from harm or unfairness because of physical   15:06  
14      abilities. So whatever the school identified them       15:06  
15      at if -- if everybody was okay with that, they got     15:06  
16      to participate.                                                     15:06

17               If it ever came to a point where somebody       15:07  
18      was too big, too strong, or it wasn't safe for that   15:07  
19      person to play, then they could appeal to the Board.   15:07

20       BY MS. KANG:                                                     15:07

21               Q. Can you tell me a little bit more about       15:07  
22      what you mean by "it wasn't safe" for them to play?   15:07

23               A. Could be a volleyball player who could       15:07  
24      jump much higher than the girls, much stronger. And   15:07  
25      when he hits the ball, could hurt the -- hurt the     15:07

1 other participants. 15:07  
2 Q. How did the Commission come up with this 15:07  
3 policy? 15:07  
4 A. It was actually created by my predecessor. 15:07  
5 And just came in in the beginnings of my time. And 15:07  
6 they were just addressing an issue that hadn't come 15:07  
7 to West Virginia at this point, but they wanted to 15:08  
8 have something in there as a temporary stopgap 15:08  
9 measure. 15:08  
10 And to this point, no one has written a 15:08  
11 rule to be voted on -- our -- by our membership. So 15:08  
12 that has been the -- our guidance since 2016. 15:08  
13 Q. Who was your predecessor? 15:08  
14 A. Gary Ray. 15:08  
15 Q. And why did he feel the need to enact this 15:08  
16 policy? 15:08  
17 MS. GREEN: Object to the form. 15:08  
18 THE WITNESS: As we went to the national 15:08  
19 meetings more and more, people were saying this was 15:08  
20 an issue, and so they wanted -- you know, it had not 15:08  
21 hit West Virginia yet but wanted to have something 15:08  
22 in place to protect the kids. 15:09  
23 BY MS. KANG: 15:09  
24 Q. Did you ever receive any complaints about 15:09  
25 this policy? 15:09

1	A. No.	15:09
2	Q. Do you know who specifically drafted the	15:09
3	policy?	15:09
4	A. I believe it was probably my predecessor	15:09
5	Gary Ray and -- and the legal counsel at the time.	15:09
6	Q. Do you know if anyone else participated in	15:09
7	the drafting?	15:09
8	A. I don't think so.	15:09
9	Q. Was this policy ever implemented?	15:09
10	A. We have never used it, if that's what you	15:09
11	are asking.	15:09
12	Q. What do you mean by "never used it"?	15:09
13	A. Nobody ever brought up a case -- I'm not	15:09
14	even aware of any case of transgender participating.	15:09
15	Therefore, nobody ever brought it to the Board to	15:10
16	decide whether or not it was fair or safe.	15:10
17	Q. When a school determines a student's	15:10
18	gender, is that always put into WVEIS?	15:10
19	MS. GREEN: Object to the form.	15:10
20	THE WITNESS: I am not sure what they put	15:10
21	in WVEIS, to be honest with you. I'm not -- you	15:10
22	know, each school, I would assume, has rules and	15:10
23	regulations they have to do.	15:10
24	BY MS. KANG:	15:10
25	Q. Is it fair to say that the Commission	15:10

1 looked to WVEIS to determine a student's gender? 15:10

2 A. We have -- we don't have access to WVEIS. 15:10

3 We would ask the school to provide what they have 15:10

4 designated the student as in WVEIS. 15:10

5 Q. Has this always been the case? 15:11

6 A. I would assume that it's always been the 15:11

7 case. Even before we had a policy, the school 15:11

8 determined what they put in WVEIS. 15:11

9 Q. Have you received any complaints about 15:11

10 B.P.J.'s participation? 15:11

11 A. Not that I know of. 15:11

12 Q. And to be clear, you haven't received any 15:11

13 complaints about transgender students participating 15:11

14 in West Virginia? 15:11

15 A. No. 15:11

16 Q. Have any transgender students ever asked 15:11

17 the Commission if they could participate in sports 15:11

18 at a secondary school level? 15:11

19 MS. GREEN: Object to the form. 15:11

20 THE WITNESS: I had one boy who wanted to 15:11

21 be a -- play volleyball, and we told him he couldn't 15:12

22 play volleyball because it was a girls' sport. And 15:12

23 he said, "Then I'll be a boy -- I'll be a girl." 15:12

24 And -- but he wasn't -- he never did 15:12

25 anything else with it. And we assumed he just 15:12

1       wanted to play volleyball because it never came back     15:12  
2       up.                                                              15:12  
  
3               I did have contact with a school who said     15:12  
4       they had one student who one day identified as a     15:12  
5       girl, next day a boy, and back and forth. But we     15:12  
6       have not heard anything more from that student.     15:12  
  
7       So...                                                      15:12  
  
8       BY MS. KANG:                                              15:12  
  
9       Q.    When was that?                                      15:12  
10      A.    That would have been in the last year.     15:12  
11      Q.    Do you remember which school it was from?    15:12  
12      A.    Yes.                                                  15:12  
13      Q.    Which school was it?                              15:12  
14      A.    South Charleston High School.                 15:12  
15      Q.    So I'm going to introduce a document     15:13  
16      that's going to be marked as Exhibit 6.               15:13  
  
17               I'll let you know when it's available in    15:13  
18       your folder.                                              15:13  
  
19               (Deposition Exhibit 6 was marked for     15:13  
20               identification and is attached hereto.)    15:13  
21      MS. KANG:   Exhibit 6 is now available in     15:13  
22      the shared exhibit folder.                              15:13  
23      BY MS. KANG:                                              15:13  
24      Q.    Mr. Dolan, let me know when you have had a    15:13  
25      chance to look at it.                                      15:13

1	A. [Witness reviews document].	15:13
2	Okay.	15:13
3	Q. Do you recognize this document?	15:14
4	A. Yeah. This was our transgender Board of	15:14
5	Directors policy.	15:14
6	Q. Is this the same policy that we were	15:14
7	discussing earlier?	15:14
8	A. Yes.	15:14
9	Q. So I want to draw your attention to Bullet	15:14
10	Point 1, which says [as read]:	15:14
11	"The transgender student's school	15:14
12	shall make the initial determination as	15:14
13	to whether a student may participate in	15:14
14	interscholastic athletics in a gender	15:14
15	that does not match the gender assigned	15:14
16	to him or her at birth."	15:14
17	Did I read that correctly?	15:14
18	A. Yes.	15:14
19	Q. Why did the Commission give the initial	15:14
20	determination to the transgender student's school?	15:14
21	MS. GREEN: Object to the form.	15:14
22	THE WITNESS: First of all, we -- we don't	15:14
23	know this student. There would be no way for us to	15:14
24	know all the factors.	15:14
25	So the school is the entity that works	15:14

1 closely with that student and the parents and the 15:15  
2 family on a daily basis. 15:15  
3 BY MS. KANG: 15:15  
4 Q. Why did the Commission think transgender 15:15  
5 students should be able to participate on teams 15:15  
6 consistent with their identity? 15:15  
7 MS. GREEN: Object to the form. 15:15  
8 THE WITNESS: I assume that the school 15:15  
9 would put them in the proper place, wherever the 15:15  
10 school decided based on all the factors. 15:15  
11 BY MS. KANG: 15:15  
12 Q. Did you ever consider implementing a 15:15  
13 hormone requirement in this policy? 15:15  
14 MS. GREEN: I'm sorry. I didn't hear what 15:15  
15 you said, Ms. Kang. 15:15  
16 MS. KANG: Sure. 15:15  
17 BY MS. KANG: 15:15  
18 Q. Did you ever consider implementing a 15:15  
19 hormone requirement in this policy? 15:15  
20 MS. GREEN: Thank you. 15:15  
21 Object to the form. 15:15  
22 THE WITNESS: Our -- it was my 15:15  
23 predecessor's. So I'm not sure of their discussion 15:15  
24 as to whether or not they were going to put that in 15:16  
25 or not. 15:16

1	BY MS. KANG:	15:16
2	Q. Did you or your staff ever consider	15:16
3	putting in this policy -- putting in a hormone	15:16
4	requirement?	15:16
5	MS. GREEN: Object to the form.	15:16
6	THE WITNESS: No. Because we would not	15:16
7	change the policy. I think it would -- if it was	15:16
8	going to change, it was going to be changed by a	15:16
9	rule by our membership and was never brought forward	15:16
10	as a rule proposal.	15:16
11	BY MS. KANG:	15:16
12	Q. Am I right to say that this policy was not	15:16
13	a rule?	15:16
14	A. That's correct.	15:16
15	Q. What's the difference between this policy	15:16
16	versus a rule?	15:16
17	A. This never went before the membership to	15:16
18	have a vote; so I don't think it has the power of a	15:16
19	rule.	15:16
20	Q. What sort of power would that be?	15:16
21	A. Well, this was giving guidance to a Board	15:16
22	of Directors.	15:17
23	But a rule is voted on and -- and approved	15:17
24	by the State Board of Education; so it is the rule	15:17
25	of law for high school athletics from the WVSSAC.	15:17

1	Q. What do you mean by it provided guidance	15:17
2	to the Board of Directors?	15:17
3	A. Would allow them to grant waivers if	15:17
4	somebody -- if it was unsafe or unfair to other	15:17
5	students or to this student.	15:17
6	Q. By unfair to the student, do you mean	15:17
7	unfair to the trans student?	15:17
8	A. Either one. Either one. For safety or	15:17
9	given them advantages that made it unfair.	15:17
10	Q. Am I right that this policy does not	15:18
11	mention anything about WVEIS?	15:18
12	MS. GREEN: Object to the form.	15:18
13	THE WITNESS: I don't believe it -- I	15:18
14	don't believe it mentions WVEIS. It does say that	15:18
15	the school will make the initial determination.	15:18
16	BY MS. KANG:	15:18
17	Q. Under this policy, what happens if a	15:18
18	student's gender marker in WVEIS is, let's say --	15:18
19	let's say, male, but the school treats the student	15:18
20	as female? What would the SAC do in that situation?	15:18
21	MS. GREEN: I'll object to the form.	15:18
22	Speculative.	15:18
23	THE WITNESS: I think we would have to	15:18
24	look at all the factors that were involved in -- you	15:18
25	know, I'm not even sure what the factors would be,	15:19

1 but I think we would have to, you know, have 15:19  
2 everything presented to us to make a determination. 15:19

3 BY MS. KANG : 15:19

4 Q. So is it fair to say, in that case you 15:19  
5 would not strictly follow WVEIS? 15:19

6 MS. GREEN: Object to the form. 15:19

7 THE WITNESS: We would -- it would be in 15:19  
8 the cases where it was unsafe and unfair that we 15:19  
9 would not be following WVEIS. If we felt like it 15:19  
10 was unsafe or unfair to the participants, other 15:19  
11 participants or the transgender student, then the 15:19  
12 Board can override it. 15:19

13 | BY MS. KANG : 15:19

14 Q. Okay. I'm going to ask you to turn your 15:19  
15 attention to a document that I'm going to be marking 15:19  
16 as Exhibit 7. 15:19

17 MS. KANG: And I'll let you know when it's 15:19  
18 available in everyone's folder. 15:19

19 (Deposition Exhibit 7 was marked for 15:20  
identification and is attached hereto.) 15:20

21 MS. KANG: Exhibit 7 should now be 15:20  
22 available in everyone's Marked Exhibit folder. 15:20

23 BY MS. KANG: 15:20

24 Q. And let me know, Mr. Dolan, whenever you 15:20  
25 have a chance to -- to look at it. 15:20

1	A. Okay.	15:20
2	Q. So this is an email that was produced by	15:20
3	your counsel in response to one of plaintiff's	15:20
4	document request.	15:20
5	Do you remember this particular email?	15:20
6	A. After I went back and searched it, yeah.	15:20
7	And I don't remember -- I didn't remember it until I	15:21
8	was looking for it.	15:21
9	Q. Is bernie.dolan@wvssac.org your email	15:21
10	address?	15:21
11	A. It is.	15:21
12	Q. Who is Daniel Swartos?	15:21
13	A. He is the executive director for the	15:21
14	South Dakota High School Athletic Association -- or	15:21
15	Activities Association.	15:21
16	Q. Is that an association in South Dakota?	15:21
17	A. Yes.	15:21
18	Q. So I'd like to draw your attention to	15:21
19	Page 2 of this pdf that's been Bates Stamped -224.	15:21
20	Let me know whenever you get there.	15:21
21	A. Okay.	15:21
22	Q. In this email you say [as read]:	15:21
23	"It has not been challenged yet."	15:21
24	To clarify, are you referring to the	15:21
25	policy that we looked at in Exhibit 6?	15:21

1           A. Right. It had not gone through any court       15:22  
2 action. Yes.                                                          15:22  
  
3           Q. Were you concerned that the policy was       15:22  
4 going to be challenged at some point?                          15:22  
  
5           A. All of our -- all of our policies get       15:22  
6 challenged at some point. So...                                  15:22  
  
7           Q. Fair enough.                                          15:22  
  
8           A. Yes.                                                      15:22  
  
9           Q. So now I'm going to introduce a document   15:22  
10 as Exhibit 8. One moment.                                      15:22  
  
11           MS. KANG: Exhibit 8 is now available in       15:22  
12 everyone's Marked Exhibit folder.                              15:22  
  
13           (Deposition Exhibit 8 was marked for       15:22  
14 identification and is attached hereto.)                      15:22  
  
15           BY MS. KANG:                                          15:22  
  
16           Q. Mr. Dolan, let me know whenever you have   15:22  
17 it open.                                                          15:22  
  
18           A. Okay.                                                  15:23  
  
19           Q. So I know this was a while ago, but do you 15:23  
20 remember the meeting that is referenced in                15:23  
21 Exhibit 8?                                                      15:23  
  
22           A. Not specifically. But yes.                      15:23  
  
23           Q. Do you remember at all who was present at 15:23  
24 this meeting?                                                  15:23  
  
25           A. It's probably in the minutes.                    15:23

1                   THE WITNESS: Can you scroll down to the       15:23  
2 next page and see...                                                   15:23  
3                   MS. GREEN: Okay.                                   15:23  
4                   THE WITNESS: Keep going. See if               15:23  
5 there's...                                                           15:23  
6                   [Witness reviews document].                   15:24  
7                   I do not remember. I would assume it was   15:24  
8 all of my Board of Directors, though.                       15:24  
9 BY MS. KANG:                                                   15:24  
10                  Q. How often does the Board of Directors     15:24  
11 meet?                                                           15:24  
12                  A. Mostly once a month. There a couple of   15:24  
13 months that we don't meet. So about ten times a       15:24  
14 year.                                                           15:24  
15                  Q. Is this Board of Directors report given to   15:24  
16 anyone outside of the Board of Directors?               15:24  
17                  MS. GREEN: Object to the form.               15:24  
18                  THE WITNESS: I'm not sure because we     15:24  
19 don't give it out anymore. So I don't know if       15:24  
20 that's -- if this came from the interscholastic or   15:24  
21 if it was Board of Directors report that somebody   15:24  
22 would have submitted.                                       15:24  
23                  I don't do it currently; so I don't know   15:25  
24 if it was -- who it went to in the past.               15:25  
25                  ///

1 BY MS. KANG: 15:25  
2 Q. Did it used to go to someone before? 15:25  
3 A. I don't know. That's what I... 15:25  
4 Q. So I want to draw your attention to Page 2 15:25  
5 of the pdf. It's been Bates Stamped -283. And it's 15:25  
6 Bullet Point 4 "Legal Update." 15:25  
7 And in Bullet Point 4, you'll see another 15:25  
8 Bullet Point iv that says "Transgender." 15:25  
9 Read that paragraph and let me know when 15:25  
10 you are finished. 15:25  
11 A. [Witness reviews document]. 15:25  
12 Okay. 15:25  
13 Q. Regarding this specific topic, what was 15:25  
14 discussed? 15:26  
15 MS. GREEN: Object to the form. 15:26  
16 THE WITNESS: Based on the information 15:26  
17 there -- obviously, I can't remember in 2016 -- but 15:26  
18 we were discussing the policy and how it was -- how 15:26  
19 schools would -- how it would work with the schools. 15:26  
20 BY MS. KANG: 15:26  
21 Q. And what do you mean "how it would work 15:26  
22 with the schools"? 15:26  
23 A. Well, it says, Number 1, the school would 15:26  
24 make the first determination; did they meet all 15:26  
25 other eligibility requirements; was it fair 15:26

1 competition if the school allows; you know, was 15:26  
2 there an appeal process; and then make sure that we 15:26  
3 look at each case on an individual basis and kind 15:26  
4 of -- where the Board stood. 15:26

5 Q. What do you mean by "where the Board 15:26  
6 stood"? 15:26

7 A. I don't know what the discussion was at 15:27  
8 that point. 15:27

9 Q. I notice that in this line it says 15:27  
10 [as read]: 15:27

11 "Editing our transgender policy and 15:27  
12 guidelines...." 15:27

13 As far as you know, was there any editing 15:27  
14 that was done to the policy? 15:27

15 A. I don't believe we edited anything because 15:27  
16 it's still the exact same policy that -- that they 15:27  
17 approved months earlier. 15:27

18 Q. Do you remember if the Board of 15:27  
19 Directors -- the Board of Directors unanimously 15:27  
20 approved this policy? 15:27

21 A. I don't know. 15:27

22 Q. Do you remember if anything was ever 15:27  
23 conveyed outside of the Board of Directors regarding 15:27  
24 this policy? 15:27

25 MS. GREEN: Object to the form. 15:27

1                   THE WITNESS: When we meet with our                   15:27  
2 principals and -- when we meet with our principals                   15:27  
3 and also at an administrative workshop for a number                   15:28  
4 of years, we indicated that whatever they determined                   15:28  
5 we would accept as long as it was not unsafe or                   15:28  
6 unfair.                                                                           15:28

7 BY MS. KANG:                                                                   15:28

8 Q. So is it fair to say that your member                           15:28  
9 schools were aware of this policy?                                   15:28

10 A. Well, I would think at different times.                       15:28  
11 Again, the turnover at schools is high. So if --                   15:28  
12 did somebody -- every person -- did we verify that               15:28  
13 they heard it? I don't know.                                           15:28

14                   But the turnover is relatively high at all           15:28  
15 of our schools, especially at the principal level.           15:28  
16 So...                                                                           15:28

17 Q. Would it be fair to say that at one point                   15:28  
18 you did inform the member schools about this policy?       15:28

19 MS. GREEN: Object to the form.                                   15:28

20 THE WITNESS: As long as they attended our                   15:29  
21 meetings, yes. They might not --                                   15:29

22 BY MS. KANG:                                                           15:29

23 Q. And by --                                                           15:29

24 A. -- have attended.                                                   15:29

25 Q. And by "meetings," do you mean the Board               15:29

1 of Directors meetings? 15:29  
2 A. No. It would be our regional principals 15:29  
3 meetings that we did at the beginning of each year. 15:29  
4 Q. Does the Commission report H.B. 3293? 15:29  
5 MS. GREEN: Object to form. 15:29  
6 THE WITNESS: I don't think we ever -- 15:29  
7 there was ever a position on it. I think our 15:29  
8 position has been we support Title IX and try to 15:29  
9 give more opportunities for girls. But bottom line 15:29  
10 is we are not allowed to discriminate by our rule -- 15:29  
11 by our policies. 15:29  
12 BY MS. KANG: 15:29  
13 Q. By "not allowed to discriminate," do you 15:29  
14 mean also not allowed to discriminate against 15:29  
15 transgender students? 15:30  
16 A. I would think we are not allowed to -- we 15:30  
17 are not allowed to discriminate against transgender. 15:30  
18 That's correct. 15:30  
19 Q. Could you tell me a little bit more about 15:30  
20 what you mean by advance Title IX? 15:30  
21 A. Well, we continued to offer more 15:30  
22 opportunities and protect the opportunities that 15:30  
23 girls have. 15:30  
24 We have increased the opportunities for 15:30  
25 girl golfers to participate just against girls. So 15:30

1       our number of girls' golfers has risen tremendously. 15:30  
2                  We also have supported a girls' only 15:30  
3                  wrestling invitational that has allowed more girls 15:30  
4                  to participate in wrestling. 15:30  
5                  We have encouraged schools to make sure 15:31  
6                  that Title IX is followed when they are putting in 15:31  
7                  fields, putting in locker rooms, money for programs, 15:31  
8                  and things like that. 15:31  
9                  Q.     Do you believe that Title IX also protects 15:31  
10                 transgender girls? 15:31  
11                 MS. GREEN: Object to the form. 15:31  
12                 THE WITNESS: I -- I am not sure. I think 15:31  
13                 that it -- it has been ruled that way, yes. 15:31  
14                 BY MS. KANG: 15:31  
15                 Q.     Have there ever been any safety concerns 15:31  
16                 with girls playing on the boys' team? 15:31  
17                 MS. GREEN: Object to the form. 15:31  
18                 THE WITNESS: The girls are choosing to 15:31  
19                 participate. So I think all kids there's -- there's 15:31  
20                 an oppor- -- there's a possibility of injury. And 15:31  
21                 so, you know, it -- it's brought out in their 15:31  
22                 preparticipation physical that, you know, there is a 15:31  
23                 possibility of injury. 15:32  
24                 BY MS. KANG: 15:32  
25                 Q.     To your knowledge, have there been any 15:32

1                   injuries from a girl playing on a boys' team? 15:32

2                   MS. GREEN: Object to the form. 15:32

3                   THE WITNESS: Oh, I'm sure. I mean, I 15:32

4                   don't know specifically. But there's -- people get 15:32

5                   hurt every day in every sport. So I'm sure somebody 15:32

6                   has gotten hurt in football or wrestling. 15:32

7                   BY MS. KANG: 15:32

8                   Q. In the context of school sports, what is 15:32

9                   competitive skill? 15:32

10                  MS. GREEN: Object to the form. 15:32

11                  THE WITNESS: Skill needed to be 15:32

12                  successful in that sport. 15:32

13                  BY MS. KANG: 15:32

14                  Q. Does cross-country require competitive 15:32

15                  skill? 15:32

16                  MS. GREEN: Object to the form. 15:32

17                  THE WITNESS: I would think so. 15:32

18                  BY MS. KANG: 15:32

19                  Q. Do you know whether any girls who tried 15:32

20                  out for cross-country at Bridgeport Middle School 15:32

21                  for the fall of 2021 were unable to join the team? 15:32

22                  MS. GREEN: Object to the form. 15:33

23                  THE WITNESS: We were not involved in the 15:33

24                  selection. So I don't know. 15:33

25                  ///

1 BY MS. KANG: 15:33

2 Q. Believe it or not, I am on my last set of 15:33  
3 questions. So thank you for bearing with me so far. 15:33  
4 Hopefully, we can get this done early. 15:33

5 So now I want to talk a little bit more 15:33  
6 about House Bill 3293. 15:33

7 Were you involved at all in the passage of 15:33  
8 H.B. 3293? 15:33

9 MS. GREEN: Object to the form. 15:33

10 THE WITNESS: I wouldn't say I was 15:33  
11 involved in the passage. 15:33

12 Oftentimes I get asked to come down and 15:33  
13 speak. And I was asked to speak to the Democratic 15:33  
14 caucus. And I pretty much said what I said earlier. 15:33  
15 We support girls' sports and continued to offer more 15:33  
16 opportunities for them. But we're not allowed to 15:33  
17 discriminate. 15:34

18 BY MS. KANG: 15:34

19 Q. Besides the Democratic caucus, did you 15:34  
20 speak to anyone else? 15:34

21 A. I had communication with Melissa White, 15:34  
22 who was -- is the counsel for House Ed. 15:34

23 Q. And did you think -- 15:34

24 A. And I think that -- 15:34

25 Q. Go ahead. 15:34

1           A. I don't think -- I don't think we spoke           15:34  
2       about it. She had sent me an email about it.           15:34  
3           Q. Did you speak to any legislative committee   15:34  
4       about H.B. 3293?                                           15:34  
5           MS. GREEN: Object to the form.                   15:34  
6           THE WITNESS: I spoke to the caucus. I           15:34  
7       was down there as a witness in front of finance, I   15:34  
8       believe, Senate finance -- or House finance. But I 15:34  
9       was never called in to -- to give an opinion or any 15:34  
10      information.                                           15:34  
11      BY MS. KANG:                                          15:34  
12           Q. So you were called in as a witness but you 15:34  
13       didn't testify?                                       15:34  
14           A. They told me to be available.               15:34  
15           Q. Were you told anything about H.B. 3293   15:35  
16       before it was passed?                                15:35  
17           MS. GREEN: Object to the form.               15:35  
18           THE WITNESS: Actually, I was sent an       15:35  
19       email from Melissa White. But when I looked at it, 15:35  
20       the beginning of it was a home school bill.       15:35  
21           So I assumed she sent the wrong bill.       15:35  
22       And -- but it did say "transgender" at the top. So 15:35  
23       I sent it to the legal counsel who was helping us 15:35  
24       with legislative activity. Or --                   15:35  
25           MS. GREEN: And I'll object to the form.       15:35

1	THE WITNESS: Okay.	15:35
2	MS. GREEN: Caution him regarding	15:35
3	conversations with counsel.	15:35
4	THE WITNESS: Okay.	15:35
5	BY MS. KANG:	15:35
6	Q. By "counsel," was it counsel at the	15:35
7	Commission?	15:35
8	A. It is counsel --	15:35
9	MS. GREEN: I'll just --	15:35
10	THE WITNESS: Okay.	15:35
11	MS. GREEN: -- object to the form.	15:36
12	THE WITNESS: Okay.	15:36
13	It was counsel we've had at -- that we	15:36
14	used during legislative time.	15:36
15	BY MS. KANG:	15:36
16	Q. Who is this person?	15:36
17	MS. GREEN: I'll just object to the form.	15:36
18	I think they're in the privilege log. We identified	15:36
19	them.	15:36
20	Do you know the name of the firm?	15:36
21	THE WITNESS: Dinsmore & Shohl is the law	15:36
22	firm.	15:36
23	BY MS. KANG:	15:36
24	Q. Did any legislators tell you about the	15:36
25	purpose of H.B. 3293?	15:36

1 MS. GREEN: Object to the form. 15:36  
2 THE WITNESS: I don't remember having that 15:36  
3 conversation with any of them. I had one email from 15:36  
4 Senator Unger, who sent me the NCAA guidelines at 15:36  
5 the time. It was unsolicited and didn't have 15:36  
6 anything, really, with it, just a link to the NCAA 15:36  
7 guidelines. 15:37  
8 BY MS. KANG: 15:37  
9 Q. Did you respond to that email? 15:37  
10 A. I did not. 15:37  
11 Q. Has the Commission taken any steps to 15:37  
12 contemplate policies or rules concerning the 15:37  
13 implementation of H.B. 3293? 15:37  
14 MS. GREEN: Object to the form. 15:37  
15 THE WITNESS: The legislation 3293 charged 15:37  
16 the Department of Ed with creating the rule. So 15:37  
17 we're going to wait for those guidelines to come out 15:37  
18 and then probably just bring them into our rule book 15:37  
19 like we did the 2.0. 15:37  
20 BY MS. KANG: 15:37  
21 Q. But to be clear, if the State Board 15:37  
22 promulgates a rule, will the Commission have to 15:37  
23 follow that rule? 15:38  
24 A. Our schools would have to follow it, 15:38  
25 which, if all of our schools have to follow it, I 15:38

1 would say we're following it, yes. 15:38

2 Q. Okay. I'm going to introduce a document 15:38  
3 as Exhibit 9, and I'll let you know when it's 15:38  
4 available. 15:38

5 (Deposition Exhibit 9 was marked for 15:38  
6 identification and is attached hereto.) 15:39

7 MS. KANG: Exhibit 9 is now available in 15:39  
8 the Marked Exhibits folder. 15:39

9 BY MS. KANG: 15:39

10 Q. And let me know when you have a chance to 15:39  
11 pull it up, Mr. Dolan. 15:39

12 A. Okay. 15:39

13 Q. So these are some text messages that your 15:39  
14 counsel produced in response to Plaintiff's 15:39  
15 discovery requests. It's been Bates stamped 15:39  
16 WVSSAC000001. And I'm going to represent to you 15:39  
17 that these are texts between you and 15:39  
18 Stephen Baldwin. 15:39

19 Do you remember this conversation? 15:39

20 A. Yes. 15:39

21 MS. GREEN: Object to the form. 15:39

22 THE WITNESS: Yes, I do. 15:39

23 BY MS. KANG : 15:39

24 Q. Who is Stephen Baldwin? 15:39

25 A. Senator from Greenbrier County. 15:39

1	Q. Is this the same Democratic office that	15:40
2	you were just talking about?	15:40
3	A. Yes, ma'am.	15:40
4	Q. Why did you decide to participate in this	15:40
5	meeting?	15:40
6	MS. GREEN: Object to the form.	15:40
7	THE WITNESS: Oftentimes I -- I don't feel	15:40
8	like I have a choice. When the legislature calls, I	15:40
9	need to go down and be heard.	15:40
10	BY MS. KANG:	15:40
11	Q. Did you bring any documents with you to	15:40
12	this meeting?	15:40
13	A. Just the -- just our board policy.	15:40
14	Q. Do you remember if you were shown any	15:40
15	documents at the meeting?	15:40
16	A. I don't remember.	15:40
17	Q. Did the Democratic Caucus give you any	15:40
18	documents?	15:40
19	A. I don't remember if they gave me the bill	15:40
20	at that time or not. So I'm not sure.	15:40
21	Q. So if you scroll down to the document	15:41
22	that's Bates Stamped -006. And I believe it's	15:41
23	Page 6 of 7 of the pdf of Exhibit 9.	15:41
24	A. Okay.	15:41
25	Q. Do you know who Rucker is?	15:41

1	A. Senator Rucker is the Senate education	15:41
2	chair.	15:41
3	Q. Do you agree with her statement that it is	15:41
4	not a real policy?	15:41
5	A. I believe it is a policy that -- but it	15:41
6	had not -- it didn't go through a rule-writing	15:42
7	process and was never challenged in court and	15:42
8	upheld.	15:42
9	So we think it was an internal policy,	15:42
10	yes, that we give our --	15:42
11	Q. What do you mean --	15:42
12	A. We give our board the opportunity to hear	15:42
13	cases of appeals.	15:42
14	Q. Can you clarify what you mean by "internal	15:42
15	policy"?	15:42
16	A. Well, it wasn't in our rule book.	15:42
17	Q. So I'm going to introduce an additional	15:42
18	document as Exhibit 10.	15:42
19	(Deposition Exhibit 10 was marked for	15:43
20	identification and is attached hereto.)	15:43
21	MS. KANG: Exhibit 10 is now available in	15:43
22	the Marked Exhibits folder.	15:43
23	BY MS. KANG:	15:43
24	Q. Let me know when you have it up,	15:43
25	Mr. Dolan.	15:43

1	A. [Witness reviews document].	15:43
2	Okay.	15:43
3	Q. Do you remember this email?	15:43
4	A. After I looked it back up, yes.	15:44
5	Q. And is that still your email address at	15:44
6	the top?	15:44
7	A. It is.	15:44
8	Q. Who is John Raby?	15:44
9	A. John Raby is an Associated Press reporter.	15:44
10	Q. Had you spoken to him before?	15:44
11	A. Probably in a different capacity. When I	15:44
12	was the director of Super Six, he was a reporter	15:44
13	that would come to games. So...	15:44
14	Q. So on the first page of Exhibit 10,	15:44
15	Mr. Raby asks the question [as read]:	15:44
16	"What does the WVSSAC think of the	15:44
17	bill?"	15:44
18	And then if you go to the next page of	15:44
19	Exhibit 10, in response you write [as read]:	15:44
20	"The WVSSAC has supported Title IX	15:44
21	for the last 50 years...Title IX has	15:44
22	non discrimination language that we	15:44
23	support."	15:45
24	What do you mean by "Title IX has	15:45
25	non-discrimination language that we support"?	15:45

1           A. I believe in the Title IX document it says 15:45  
2 you can't discriminate. And so we support Title IX; 15:45  
3 so we have to support the whole thing. 15:45  
4           Q. You also say in your response that 15:45  
5 [as read]: 15:45  
6                 "This has increased the quantity and 15:45  
7                 quality of opportunities for girls in 15:45  
8                 our schools." 15:45  
9                 What opportunities do you believe has been 15:45  
10 increased? 15:45  
11           A. Well, when I was in school, which would 15:45  
12 have been the early -- early '70s, may or may not 15:45  
13 have had girls' basketball at all and wouldn't have 15:45  
14 had volleyball or soccer, for sure, swim. So over 15:45  
15 the last 50 years, we have increased the sports that 15:45  
16 girls can participate in a hundred times over. 15:45  
17           Q. Do you believe that B.P.J. should have the 15:45  
18 right to these opportunities? 15:46  
19           MS. GREEN: Object to the form. 15:46  
20           THE WITNESS: I believe we'll follow the 15:46  
21 rule -- the law. 15:46  
22 BY MS. KANG:  
23           Q. What do you mean by "follow the law"? 15:46  
24           A. Whatever -- whatever the Department of Ed 15:46  
25 writes as the rule, then we have to implement that 15:46

1 with all of our schools. 15:46

2 Q. Do you believe that B.P.J.'s participation 15:46  
3 in cross-country harms any of these opportunities? 15:46

4 MS. GREEN: Object to the form. 15:46

5 THE WITNESS: Well, "harm" is a -- a 15:46  
6 unique word because harm might be that it might not 15:46  
7 physically harm somebody, but they -- you know, harm 15:46  
8 might be that you take somebody's position on the 15:46  
9 team. 15:46

10 In cross-country, only the top seven kids 15:46  
11 get to compete on the varsity team, whether it's 15:46  
12 middle school or high school. If you are 15:46  
13 number seven and you get bumped out, there might be 15:46  
14 harm. 15:47

17 | BY MS. KANG: 15 : 47

18 Q. Do you know if B.P.J. has, as you say, 15:47  
19 bumped out another girl? 15:47

A. I do not. 15:47

21 MS. GREEN: Object to the form. 15:47

22 | THE WITNESS: Okay. 15:47

23 MS. KANG: So I am going to introduce 15:47

24 another document as Exhibit 11. 15:47

25 | //

1	(Deposition Exhibit 11 was marked for	15:47
2	identification and is attached hereto.)	15:48
3	MS. GREEN: Okay.	15:48
4	MS. KANG: Exhibit 11 is now available in	15:48
5	everyone's Marked Exhibit folder.	15:48
6	BY MS. KANG:	15:48
7	Q. Let me know when you have it up.	15:48
8	And, Mr. Dolan, we can take a five-minute	15:48
9	break, I think, after -- after this email, before we	15:48
10	wrap up.	15:48
11	A. Okay.	15:48
12	Scroll down.	15:48
13	Okay.	15:48
14	Q. Do you recognize this email?	15:48
15	A. I do.	15:48
16	Q. Do you remember this email?	15:48
17	A. I don't know if I remember it. But I	15:48
18	recognize it, yes.	15:48
19	Q. Who is Josh Weekley?	15:48
20	A. He runs RunWV which keeps track of all	15:48
21	boys' and girls' track and cross-country times and	15:49
22	posts them on runwv.com.	15:49
23	Q. Why did you contact him?	15:49
24	A. I was looking for data in comparing girls'	15:49
25	times to boys' times.	15:49

1 Q. Why did you want that data? 15:49  
2 A. Just curious to see if there were 15:49  
3 advantages that boy -- if -- what the actual data 15:49  
4 showed for comparison of boys' and girls' times. 15:49  
5 Q. Did you ask in response to any questions 15:49  
6 from the West Virginia Legislature? 15:49  
7 A. I don't remember the time frame of this; 15:49  
8 so I don't know if it was before or after or during 15:49  
9 the legislative time. 15:49  
10 Q. Did you ever get the data from Josh 15:49  
11 Weekley? 15:50  
12 A. Did not. Did not. They had computer 15:50  
13 problems and so... 15:50  
14 Q. What did you mean by "a transgender issue" 15:50  
15 on the -- 15:50  
16 A. Again -- 15:50  
17 Q. -- first page? 15:50  
18 A. I was asking -- I was just telling him. I 15:50  
19 was trying to compare boys' times and girls' times 15:50  
20 and what hap- -- you know, what the actual times 15:50  
21 were of boys and girls competing against each other. 15:50  
22 MS. GREEN: Okay. I think if folks are 15:50  
23 all right, we will take a five-minute break, and 15:50  
24 then I should have -- let's see -- I should have a 15:50  
25 couple more exhibits to go through. 15:50

1	But we'll take a pause here and come back	15:50
2	around 3:56.	15:50
3	THE WITNESS: Okay.	15:50
4	THE VIDEOGRAPHER: Going off the record.	15:50
5	The time is 3:51.	15:50
6	(Brief recess.)	15:57
7	THE VIDEOGRAPHER: Back on the record.	15:57
8	The time is 3:57.	15:57
9	BY MS. KANG:	15:57
10	Q. Mr. Dolan, I'm going to introduce another	15:57
11	document as Exhibit 12.	15:57
12	A. Okay.	15:57
13	Q. And I'll let you know when it's in there.	15:57
14	(Deposition Exhibit 12 was marked for	15:57
15	identification and is attached hereto.)	15:58
16	MS. KANG: Okay. Exhibit 12 is now	15:58
17	available in the Marked Exhibits folder.	15:58
18	BY MS. KANG:	15:58
19	Q. Let me know when you have had a chance to	15:58
20	pull it up.	15:58
21	A. Scroll down.	15:58
22	That's it. Okay.	15:58
23	Okay.	15:58
24	Q. Is this the same Melissa White as the one	15:59
25	you were referencing earlier?	15:59

1 A. Yes. 15:59

2 Q. Do you know what Melissa White's position 15:59

3 is? 15:59

4 A. Well, on the paper it says Chief Counsel 15:59

5 for Committee on Education of West Virginia House of 15:59

6 Delegates. 15:59

7 Q. Do you know why Melissa White reached out 15:59

8 to you regarding H.B. 3293? 15:59

9 A. There may have been original language in 15:59

10 there that may have identified the WVSSAC. I don't 15:59

11 know. But it involves athletics; so I'm sure, as a 15:59

12 courtesy, she was sending me something. 15:59

13 Q. Had you spoken to her about athletics 15:59

14 before this email? 15:59

15 MS. GREEN: I'll object to the form. 15:59

16 THE WITNESS: This -- that -- last year or 15:59

17 in general? 15:59

18 BY MS. KANG:

19 Q. In general. 15:59

20 A. Yeah. I mean, every time there is 15:59

21 legislation involving athletics, home school, 15:59

22 whatever, it's not unusual for them to contact me 15:59

23 about our position or our input on it. 16:00

24 Q. So you notice in the top-right corner, 16:00

25 Thursday, March 11th is underlined. 16:00

1                   Was this the first time that Melissa White   16:00  
2                   spoke to you about H.B. 3293?                   16:00  
3                   MS. GREEN: Object to the form.               16:00  
4                   THE WITNESS: I believe it was. I may       16:00  
5                   have been underlining that as I was gathering my   16:00  
6                   documents to make sure I got them all out of my   16:00  
7                   email. So that might be why that was underlined.   16:00  
8                   BY MS. KANG:                                   16:00  
9                   Q. In this email, she asks for your thoughts   16:00  
10                  on H.B. 3293.                                   16:00  
11                  Did you provide her with any thoughts?       16:00  
12                  A. I did not. It was -- it -- I thought      16:00  
13                  there was an attachment to that, and I sent it off.   16:01  
14                  Was there -- oh, yeah. There it is. Down       16:01  
15                  at the bottom.                                   16:01  
16                  And I didn't -- I didn't open it. I sent      16:01  
17                  it off to Dinsmore & Shohl.                   16:01  
18                  Q. Did you ever have any verbal                16:01  
19                  communications with Melissa White about this bill?   16:01  
20                  A. The only communication I could -- might   16:01  
21                  have had is that when she asked me to come to the   16:01  
22                  finance meeting and wait outside. And then I was   16:01  
23                  told I wasn't needed.                           16:01  
24                  MS. KANG: I'm going to introduce a        16:01  
25                  document as Exhibit 13.                           16:01

(Deposition Exhibit 13 was marked for 16:02

identification and is attached hereto.) 16:02

MS. KANG: Exhibit 13 is now available in 16:02

everyone's Marked Exhibit folder. 16:02

BY MS. KANG: 16 : 02

Q. So let me know when you have it up. And 16:02

once you have it up, if you could scroll to the very 16:02

last page that has been Bates stamped -370. Let me 16:02

know. 16:02

A. Okay. 16:02

Q. Do you recognize this text exchange? 16:02

A. Yes. 16:02

Q. Is the Melissa at the top of the thread 16:03

referring to Melissa White? 16:03

A. Yes. 16:03

Q. Do you know why she asked for the 16:03

transgender policy? 16:03

MS. GREEN: Object to the form. 16:03

THE WITNESS: At some point, I don't -- 16:03

I'm not sure of the date. But at some point we 16:03

were -- you know, we had told them that we had a 16:03

Board policy for transgender. 16:03

So I'm sure she was trying to get a copy 16:03

of that. 16:03

1	BY MS. KANG:	16:03
2	Q. Who is "them"?	16:03
3	A. House -- House Education.	16:03
4	Q. Did you provide the policy to her?	16:03
5	A. I'm sure I did.	16:03
6	Q. Did she say anything to you afterwards	16:03
7	about the transgender policy?	16:03
8	A. Not that I recall.	16:03
9	Q. Did the two of you discuss H.B. 3293 after	16:03
10	this text conversation at any point?	16:04
11	MS. GREEN: Object to the form.	16:04
12	THE WITNESS: Not that I recall.	16:04
13	MS. KANG: I'm just going to introduce one	16:04
14	last exhibit, Exhibit 14.	16:04
15	(Deposition Exhibit 14 was marked for	16:04
16	identification and is attached hereto.)	16:04
17	MS. KANG: Exhibit 14 is now available in	16:04
18	the Marked Exhibits folder.	16:04
19	BY MS. KANG:	16:04
20	Q. And let me know when you have it up.	16:04
21	THE WITNESS: That is 11.	16:04
22	MS. GREEN: Oh. I'm sorry. Uploaded	16:04
23	error there.	16:04
24	THE WITNESS: It was 9. Yeah.	16:04
25	There it is.	16:04

1 MS. GREEN: I'm sorry. 16:04  
2 THE WITNESS: Okay. 16:05  
3 BY MS. KANG: 16:05  
4 Q. So on the first page that is Bates 16:05  
5 Stamped -286, you will see it reads "Regional 16:05  
6 Principals' Meetings." 16:05  
7 What is the purpose of the Regional 16:05  
8 Principals' Meetings? 16:05  
9 A. It's when we make sure that any new rules, 16:05  
10 we go over them. And then also -- most importantly, 16:05  
11 they get their C&I cards, which are all the coaches 16:05  
12 get in free to games. 16:05  
13 And so that's the only reason why they 16:05  
14 come to the meeting, sadly to say, not to hear me 16:05  
15 speak. 16:06  
16 Q. And apologies for my ignorance. But 16:06  
17 what's a C&I card? 16:06  
18 A. Courtesy and identification card. It's 16:06  
19 like a free pass into all high school games. 16:06  
20 Q. All right. Scroll down one page in 16:06  
21 Exhibit 14 to the page Bates Stamped -287. 16:06  
22 A. Is it the schedule? 16:06  
23 Q. No. It's just the first -- 16:06  
24 A. Regional Principals' Meeting? 16:06  
25 Q. That's correct. 16:06

1	A. First slide?	16:06
2	Q. That's -- that's correct.	16:06
3	A. Okay.	16:06
4	Q. So are these the slides that were	16:06
5	presented at this meeting?	16:06
6	A. Yes.	16:06
7	Q. Do you know who prepared these slides?	16:06
8	A. Each of us prepared our -- our portion,	16:06
9	myself and the three assistants. So we all have	16:06
10	different areas to cover.	16:07
11	Q. By "three assistants," you mean your three	16:07
12	assistant executive directors?	16:07
13	A. Uh-huh.	16:07
14	Q. So I want to draw your attention to what's	16:07
15	been Bates stamped -346. Apology if I -- will	16:07
16	identify the page number in a moment.	16:07
17	So it is Page 61 of the pdf.	16:07
18	A. Okay.	16:07
19	Q. Do you recognize this slide?	16:07
20	A. I'm not there yet.	16:07
21	MS. GREEN: I'm sorry.	16:07
22	BY MS. KANG:	16:07
23	Q. Oh. I'm sorry.	16:07
24	A. Yes.	16:08
25	Q. Do you know who prepared this slide?	16:08

1 A. This would have been Cindy Daniel. 16:08

2 Q. And she is one of your -- 16:08

3 A. Assistant executive directors. 16:08

4 Q. So in the second bullet point here, it 16:08

5 says [as read] : 16:08

6 "WVSSAC's current position is that 16:08

7 gender is identified in WVEIS for 16:08

athletic participation purposes." 16:08

9                   What does this mean?                   16 : 08

10 A. Well, I think this was before the ruling 16:08

11 that B.P.J. could participate; so that we were still 16:08

12 reiterating it in our policy at the time until we 16:08

13 got the final ruling from the Department of Ed. 16:09

14 Q. Just to be clear, if someone's gender in 16:09

15 WVEIS is male, does that mean they would have to 16:09

16 play on the boys' team? 16:09

17 A. Yes. 16:09

18 Q. Before H.B. 3293 was enacted and under 16:09

19 your trans policy, did you just rely on the school's 16:09

20 determination of gender or would you go into WVEIS 16:09

21 and look at WVEIS? 16:09

22 A. We don't have access to WVEIS; so we 16:09

23 wouldn't be able to. And, to our knowledge, we 16:09

24 didn't have any other cases prior to this. 16:09

Q. So in this slide, when it says "the" 16:09

1 current position is that gender is identified in 16:09  
2 WVEIS," would you have to depend on the school's 16:09  
3 determination? 16:09  
4 A. Yes. 16:09  
5 Q. Can the information in WVEIS for someone's 16:10  
6 gender be changed? 16:10  
7 MS. GREEN: Object to the form. 16:10  
8 THE WITNESS: I'm not sure what the rules 16:10  
9 are for WVEIS. 16:10  
10 BY MS. KANG: 16:10  
11 Q. Do you know who contributes information to 16:10  
12 WVEIS? 16:10  
13 MS. GREEN: Object to the form. 16:10  
14 THE WITNESS: Each school does, but I'm 16:10  
15 not sure, like, who in each school. 16:10  
16 BY MS. KANG: 16:10  
17 Q. Do you remember if this slide was 16:10  
18 discussed during the regional principals' meeting? 16:10  
19 A. Probably was. I would say yes. 16:10  
20 Q. What was discussed? 16:10  
21 MS. GREEN: Object to the form. 16:10  
22 THE WITNESS: Just what was on the slide, 16:10  
23 that current law is being challenged, and we were 16:10  
24 waiting for final ruling from the Department of Ed. 16:10  
25 ///

1 BY MS. KANG: 16:10  
2 Q. Anything else? 16:10  
3 A. As it relates to transgender as it relates 16:10  
4 to this slide, you mean? 16:10  
5 Q. That's correct. 16:11  
6 A. I don't think there was anything more 16:11  
7 discussed, from my knowledge. 16:11  
8 MS. KANG: So I believe that is all my 16:11  
9 questions. 16:11  
10 I'm going to go off the record for about 16:11  
11 five minutes or so and see if there's anything else 16:11  
12 I need to ask. 16:11  
13 But, otherwise, I think we're at the 16:11  
14 finish line, Mr. Dolan. 16:11  
15 THE WITNESS: Good. 16:11  
16 THE VIDEOGRAPHER: Off the record. The 16:11  
17 time is 4:11. 16:11  
18 (Brief recess.) 16:17  
19 THE VIDEOGRAPHER: Back on the record. 16:17  
20 The time is 4:18. 16:17  
21 MS. KANG: Mr. Dolan, I am finished asking 16:17  
22 my questions. I will reserve the right to ask any 16:17  
23 questions depending on other parties' questions. 16:18  
24 I'll also reserve the right to ask questions if 16:18  
25 there are changes in the errata. But otherwise I 16:18

1 think we're -- you're done with me for today. 16:18  
2 THE WITNESS: Okay. Thank you. 16:18  
3 THE VIDEOGRAPHER: Is there anybody else 16:18  
4 with questions or should I go ahead and close out? 16:18  
5 MR. SCRUGGS: This is Jonathan Scruggs for 16:18  
6 the intervenor. No questions from us. 16:18  
7 MS. MORGAN: This is Kelly Morgan. 16:18  
8 No questions for the State Board and 16:18  
9 Superintendent Burch. 16:18  
10 MR. CROPP: This is Jeffrey Cropp for 16:18  
11 Harrison County Board of Education and Dora Stutler. 16:18  
12 16:18  
13 EXAMINATION 16:18  
14 BY MR. CROPP: 16:18  
15 Q. I just have a couple of follow-up 16:18  
16 questions, Mr. Dolan. 16:19  
17 A. Okay. 16:19  
18 Q. Regarding Exhibit 6, which is the 16:19  
19 transgender policy, was a copy of that policy ever 16:19  
20 distributed to the member schools? 16:19  
21 A. I don't believe so. 16:19  
22 Q. Okay. Was a copy of the transgender 16:19  
23 policy ever given to the principals? 16:19  
24 A. I don't believe so. 16:19  
25 Q. Was a copy of that transgender policy ever 16:19

1 given to the County Boards of Education? 16:19

2 A. I don't believe so. 16:19

3 Q. Was a copy of the transgender policy ever 16:19  
4 given to the county superintendents? 16:19

5 A. I don't believe so. 16:19

6 Q. You mentioned that -- at a regional 16:19  
7 meeting that that policy was reviewed with the 16:19  
8 principals who attended the -- that meeting. 16:19

9 But my question is, is that -- was that 16:19  
10 just at the first meeting where the policy was 16:19  
11 introduced, or did you go over that policy every 16:19  
12 regional meeting after it was introduced? 16:19

13 MS. GREEN: Object to the form. 16:19

14 THE WITNESS: Normally, we would -- you 16:20  
15 mean each year? Or do you mean, like, when we do 16:20  
16 ten of them, was it brought up at each ten? 16:20

17 BY MR. CROPP: 16:20

18 Q. Each year. So it was introduced in one 16:20  
19 year. My question is at the subsequent years -- did 16:20  
20 you go over that policy during the subsequent years 16:20  
21 at that -- at all ten regional meetings? 16:20

22 A. I would say it was -- I don't know when it 16:20  
23 came off, but it was on the agenda for a number of 16:20  
24 years, yes. 16:20

25 Q. Whether you say -- 16:20

1 A. I don't -- 16:20  
2 Q. Go ahead. 16:20  
3 A. I don't remember if it was on this past 16:20  
4 year -- it was on this year with Cindy's slide, but 16:20  
5 normally it was on mine. 16:20  
6 So I don't -- I would have to go back and 16:20  
7 check all my -- if we record them. And if you 16:20  
8 didn't go to the meeting, then you were able to 16:20  
9 listen to the recording. 16:20  
10 Q. Okay. This policy -- excuse me. 16:20  
11 The policy was never voted on by the 16:21  
12 member schools, the transgender policy? 16:21  
13 A. That's correct. 16:21  
14 MR. CROPP: I don't have any further 16:21  
15 questions. 16:21  
16 Thank you. 16:21  
17 MR. CAPEHEART: Curtis Capeheart for the 16:21  
18 State. 16:21  
19 I have no questions. 16:21  
20 Thank you, Mr. Dolan. 16:21  
21 THE WITNESS: Thank you. 16:21  
22 THE VIDEOGRAPHER: Okay. That looks like 16:21  
23 everybody. So I'll go ahead and close out unless 16:21  
24 there is anything else. 16:21  
25 THE REPORTER: And this is the reporter. 16:21

1           I did hear that there will be an errata           16:21  
2 sheet. So is the witness reviewing?                       16:21  
3           MS. GREEN: Yes. We'll read and sign.           16:21  
4 And if I could --                                          16:21  
5           This is Roberta Green.                           16:21  
6           So if I could please have it sent to me,      16:21  
7 and I'll get with Mr. Dolan.                           16:21  
8           THE REPORTER: Thank you.                       16:21  
9           THE VIDEOGRAPHER: Thank you.                   16:21  
10          We are off the record at 4:22 p.m. EST,       16:21  
11          and this concludes today's testimony given by   16:22  
12          30(b) (6) Witness Bernie Dolan. The total number of   16:22  
13          Media Units used was three. And will be retained by   16:22  
14          Veritext Legal Solutions.                         16:22  
15          (Whereupon, at 4:22 p.m., the deposition          
16          of BERNARD DOLAN was adjourned.)  
17                                                            --- oOo ---  
18  
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25

I, BERNARD DOLAN, hereby certify under penalty  
of perjury under the laws of the State of California that  
the foregoing is true and correct.

Executed this \_\_\_\_\_ day of  
\_\_\_\_\_, 2022, at \_\_\_\_\_,  
California.

\_\_\_\_\_

BERNARD DOLAN

30 (b) (6) DEPOSITION

WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION

1 STATE OF CALIFORNIA  
2 COUNTY OF LOS ANGELES

)  
 ) SS.

3  
4 I, Dayna Hester, C.S.R. No. 9970, in  
5 and for the State of California, do hereby certify:

6 That, prior to being examined, the witness named  
7 in the foregoing deposition was by me duly sworn to  
8 testify to the truth, the whole truth, and nothing but the  
9 truth;

10 That said deposition was taken down by me in  
11 shorthand at the time and place therein named and  
12 thereafter reduced to typewriting under my direction, and  
13 the same is a true, correct, and complete transcript of  
14 said proceedings;

15 That if the foregoing pertains to the original  
16 transcript of a deposition in a Federal Case, before  
17 completion of the proceedings, review of the transcript  
18 { XX } was { } was not required;

19 I further certify that I am not interested in  
20 the event of the action.

21 Witness my hand this 26th day of February,  
22 2022.

23 

24 Certified Shorthand Reporter  
25 for the State of California

1 ROBERTA F. GREEN, ESQ.

2 RGREEN@SHUMANLAW.COM

3 February 28, 2022

4 RE: B.P.J. vs. WEST VIRGINIA STATE BOARD OF EDUCATION

5 February 11, 2022, BERNARD DOLAN, JOB NO. 5079532

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9     \_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext

10       to schedule a time to review the original transcript at

11       a Veritext office.

12     \_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF

13       Transcript - The witness should review the transcript and

14       make any necessary corrections on the errata pages included

15       below, notating the page and line number of the corrections.

16       The witness should then sign and date the errata and penalty

17       of perjury pages and return the completed pages to all

18       appearing counsel within the period of time determined at

19       the deposition or provided by the Code of Civil Procedure.

20     \_\_ Waiving the CA Code of Civil Procedure per Stipulation of

21       Counsel - Original transcript to be released for signature

22       as determined at the deposition.

23     \_\_ Signature Waived - Reading & Signature was waived at the

24       time of the deposition.

25

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\_x\_ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF

Transcript - The witness should review the transcript and make any necessary corrections on the errata pages included below, notating the page and line number of the corrections. The witness should then sign and date the errata and penalty of perjury pages and return the completed pages to all appearing counsel within the period of time determined at the deposition or provided by the Federal Rules.

\_\_ Federal R&S Not Requested - Reading & Signature was not requested before the completion of the deposition.

1 B.P.J. vs. WEST VIRGINIA STATE BOARD OF EDUCATION

2 BERNARD DOLAN (#5079532)

3 E R R A T A S H E E T

4 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

5 REASON \_\_\_\_\_

6 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

7 REASON \_\_\_\_\_

8 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

9 REASON \_\_\_\_\_

10 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

11 REASON \_\_\_\_\_

12 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

13 REASON \_\_\_\_\_

14 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

15 REASON \_\_\_\_\_

16 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

17 REASON \_\_\_\_\_

18 WITNESS \_\_\_\_\_ Date \_\_\_\_\_

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25

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## **TRANSGENDER POLICY**

### **WVSSAC BOARD OF DIRECTORS**

In the event a member school, or its governing authority, determines to permit transgender students to participate in interscholastic athletics, the WVSSAC has adopted the following policy to govern such participation:

#### I. **Definitions**

*Transgender Student* – a student whose gender identity differs from the student's assigned sex at birth.

*Gender Identity* – a person's deeply-felt internal sense of being male or female.

#### II. **WVSSAC Transgender Student Policy**

A Transgender Student shall be eligible to participate in interscholastic athletics in a manner consistent with a member school policy that meets the minimum standards designated by the WVSSAC Board of Directors policy.

The WVSSAC Board of Directors has designated the following as the minimum standards a member school must consider when determining whether a transgender student may participate in interscholastic athletics in a particular sport. A separate determination shall be made by the member school for each sport in which the student seeks to participate.

1. The transgender student's school shall make the initial determination as to whether a student may participate in interscholastic athletics in a gender that does not match the gender assigned to him or her at birth. When determining whether a transgender student is eligible to participate in interscholastic athletics in a manner consistent with the student's gender identity a member school must consider the following:
  - a. Whether the student is a "transgender student" as determined based upon applicable regulations and policies of the member school or its governing authority.
  - b. Whether the student meets all applicable academic and enrollment eligibility requirements.
  - c. Whether fair competition among high school teams would be impacted by the student's participation.
2. The determination of a student's gender assignment for interscholastic athletics shall remain in effect for the duration of the student's high school eligibility.
3. Any member school may appeal the eligibility of a transgender student on the grounds that the student's participation in interscholastic athletics would adversely affect competitive equity or safety of teammates or opposing players.
  - a. Any such appeal will be heard by the WVSSAC Board of Directors.
  - b. The identity of the student shall remain confidential. All discussion and documentation will be kept confidential and the proceedings will also be confidential unless the student and family make a specific request otherwise.
  - c. The WVSSAC Board of Directors will not consider whether the school has properly determined the student's sex assignment. The board's deliberations will be limited to the question of whether the transgender student represents a threat to competitive equity or the safety of teammates or opposing players. Factors to be considered will include, but not be limited to, the age of the student; the athletic experience of the student; the degree to which the student presents a risk of harm to other competitors due to his or her strength, size, or speed; the nature of the sport; and the degree to which fair competition among high school teams would be impacted by the student's participation.

[&amp; - 2300]

&	<b>10</b> 8:4 24:8 81:4 83:8,21 142:18,19 142:21 143:14,19	<b>138</b> 74:18 <b>139</b> 80:7	<b>1:35</b> 59:11 <b>1st</b> 60:16
& 4:11 5:4 12:2,20 138:21 150:17 164:23 165:9	<b>100</b> 56:20,22,23 <b>10001-2157</b> 2:15 <b>10004</b> 3:10 <b>10005-3919</b> 3:21 <b>103</b> 7:18 <b>104</b> 5:20 <b>10th</b> 34:8 <b>11</b> 1:22 2:5 8:6 9:2 24:20 97:18 <b>145:24</b> 146:1,4 152:21 164:5 <b>11.pdf</b> 7:17 <b>1144</b> 3:5 <b>11th</b> 9:7 149:25 <b>12</b> 8:7 25:7 37:21 39:6 57:23 69:23 95:25 96:1,2 100:11,12 108:24 148:11,14,16 <b>120</b> 3:20 <b>121</b> 7:20 <b>122</b> 100:24 <b>124</b> 100:21,22 101:5 <b>125</b> 3:9 <b>126</b> 7:21 <b>127</b> 64:6,8 <b>127-1-2</b> 65:3 <b>127-1-3</b> 67:9 <b>127-1-4</b> 70:11 <b>127-1-8</b> 73:17 <b>127-1-9</b> 80:9 <b>128</b> 7:23 <b>13</b> 8:9 25:19 104:2 108:20 150:25 151:1,3 <b>137</b> 73:15	<b>14</b> 7:4 8:10 26:15 63:22 99:4 110:8 152:14,15,17 153:21 <b>14.pdf</b> 7:13 <b>140</b> 8:3 <b>1411</b> 4:6 <b>142</b> 8:4 <b>146</b> 8:6 <b>148</b> 8:7 106:3,6,14 <b>15</b> 63:19 83:20 92:24 <b>15.pdf</b> 7:20 <b>151</b> 8:9 <b>15100</b> 5:14 <b>152</b> 8:10 <b>158</b> 7:5 <b>15th</b> 3:5 49:1 <b>16</b> 63:12,18,19,21 64:5 <b>17</b> 70:8 92:13 106:3,4,13,15,15 106:17 <b>17.pdf</b> 8:9 <b>18</b> 7:12 37:19 99:11 <b>18.pdf</b> 7:19 <b>18225</b> 65:11 66:3 <b>18516</b> 163:23 <b>19</b> 39:4 73:10 99:11 <b>19.pdf</b> 7:14 <b>1900</b> 4:20 <b>1916</b> 38:8 64:18 66:12 <b>19th</b> 3:20 <b>1:20</b> 59:6 <b>1:30</b> 59:2	<b>2</b> <b>2</b> 7:14 19:22,23 33:19,22 34:2,5,5 34:14,14,18 38:1 43:20,23 52:5 59:9 112:14 127:19 130:4 <b>2.0</b> 44:7 54:21 55:1 61:8 <b>2.0.</b> 60:20 139:19 <b>20</b> 39:15 40:2 65:25 66:23 73:15 83:20 94:5 107:25 108:3 <b>200</b> 4:6 <b>2000</b> 35:18,18 <b>2001</b> 35:18 <b>2012</b> 31:17 <b>2014</b> 31:17 <b>2016</b> 92:13 118:12 130:17 <b>2018</b> 100:1 <b>2019</b> 64:23,25 100:1,2 <b>2020</b> 97:23 100:2 <b>2021</b> 47:25 97:23 97:24 98:4 135:21 <b>2022</b> 1:22 2:5 9:2 9:7 34:9 97:24 98:4 162:8 163:22 164:3,5 <b>2025.520</b> 164:9,12 <b>20th</b> 2:21 <b>21</b> 74:18 <b>212</b> 2:16 3:10,21 <b>22</b> 80:7 <b>224</b> 127:19 <b>2300</b> 3:5
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES

ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES  
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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